[fol. 2] IN UNITED STATES DISTRICT COURT

LIBEL OF INTERSTATE STEAMSHIP COMPANY AGAINST GREAT LAKES TRANSIT CORPORATION, IN CASE No. 3168—Filed November 23, 1933

To the Honorable the Judges of said Court:

The libel and complaint of Interstate Steamship Company, a corporation, against the Great Lakes Transit Corporation, a corporation, in a cause of collision, civil and maritime, respectfully alleges and propounds as follows:

I

Libelant, the Interstate Steamship Company, is a corporation organized and existing under and by virtue of the laws of the State of West Virginia, and is and was at all times mentioned herein, sole owner of the Steamer Willis L. King, her engines, boilers, boats, machinery, tackle, apparel and furniture, and that no other person or corporation has or had any interest therein as owner.

II

Respondent, the Great Lakes Transit Corporation, is a corporation foreign to this State, and as such, as libelant is informed and believes, is and at all times herein mentioned was the owner of and operating the Steamer George D. Dixon, her engines, boilers, boats, machinery, tackle, apparel and furniture.

III

Said Steamers Willis L. King and George D. Dixon are and were at all times herein mentioned, vessels of the United States, each of several hundred tons burden, enrolled and licensed for the coasting trade, and engaged in the business of commerce and navigation upon the Great Lakes and their connecting and tributary waters.

IV

Libelant, on information and belief, alleges that on the 11th day of August, 1933, its said Steamer Willis L. King, being then and at all times hereinafter mentioned, staunch, strong and seaworthy, with a full complement of officers and crew properly stationed and attentive to their duties, was on a voyage from Superior, Wisconsin, to Huron, Ohio,

[fol. 3] laden with iron ore; when coming down St. Clair River a little after 5:00 P. M. on said date and approaching the mouth of Black River, at Port Huron, a one-blast bend or berth whistle was blown; when past Black River a heavy squall with wind, rain and dark atmosphere was seen below, whereupon the King was checked to moderate speed; shortly a fog whistle was heard from an upbound steamer on the starboard bow, whereupon the King answered with a fog whistle and then blew to her a two-blast passing signal; no answer was heard but shortly thereafter it cleared some and a steamer, which afterward proved to be the George D. Dixon, was seen coming upriver on a parallel course to the King and about a point and a half on the King's starboard bow, so that the steamers were in position to pass starboard to starboard; another two-blast passing signal was then blown by the King to the Dixon and the King starboarded some, but instead of the Dixon continuing as they were in perfect safety starboard to starboard, she was observed to start swinging toward the King, whereupon the King blew an alarm signal, backed full speed and blew another two-blast; the Dixon, instead of staying on her own side or stopping or backing continued on her swing toward the King and came across the King's bow at high speed, catching the King's bow about one-half of the way back on the Dixon's port side, doing considerable damage to both ships, and then continued on over onto the Canadian shore; the King stood by until it was seen that those on the Dixon were in no danger when she proceeded on, stopping at a dock on the American side below.

V

Libelant further alleges that said collision and damage occurred without any fault or negligence on the part of its said Steamer Willis L. King or her officers or crew, but on the contrary was occasioned and occurred solely by and through the fault and negligence of the said Steamer George D. Dixon and those who were then and there in charge of her; and not having full knowledge of all that occurred on board said Steamer George D. Dixon and therefore retaining the right to claim the benefit of any other faults which may develop on full hearing, now charges that said Steamer George D. Dixon, her officers and crew, were in fault in the following particulars:

[fol. 4] 1. That those in charge of her navigation were incompetent, negligent and inattentive to their duties.

2. That she failed to maintain proper and efficient lookout.

3. That she maintained too high a rate of speed under the conditions prevailing.

4. That when in a situation to pass starboard to starboard in perfect safety she, in the face of repeated two-blast whistles and alarm signals, sheered or steered from such position across the bow of the King.

5. That she did not timely check or stop or reverse or use any means to avoid said collision.

VI

Libelant further alleges that by reason of said collision and the negligence of the said Steamer George D. Dixon and her officers and crew, its Steamer Willis L. King was greatly damaged, and that in and about the proper and necessary repair thereto, together with incidental expenses connected therewith, libelant has been compelled to and has expended the sum of $46,864.35, and that by reason of said collision and the repairs rendered necessary thereby, the said steamer was necessarily delayed and libelant lost the use thereof for a priod of sixteen days, seven hours and fifty-two minutes, during which time the fair value for the use of said steamer amounted to the sum of $14,071.76, making a total damage to libelant of $60,936.11, for which, with interest thereon, libelant claims a lien on said Steamer George D. Dixon and prays for judgment against respondent Great Lakes Transit Corporation.

VII

That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore libelant prays that process in due form of law and according to the course and practice of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the said respondent, Great Lakes Transit Corporation, citing it to appear and answer all and singular the

[fol. 5] premises; that this Honorable Court will be pleased to decree to libelant its loss and damages aforesaid, with interest and costs; that respondent, Great Lakes Transit Corporation, be decreed to pay said damages and loss with interest and costs and that libelant may have such other and further relief as in law and justice it may be entitled to receive.

Interstate Steamship Company, Libelant, by Holding, Duncan & Leckie, Its Proctors. Holding, Duncan & Leckie, Proctors for Libelant.

Duly sworn to by Frederick L. Leckie. Jurat omitted in printing.

[fol. 6] IN UNITED STATES DISTRICT COURT

ANSWER OF GREAT LAKES TRANSIT CORPORATION TO LIBEL OF INTERSTATE STEAMSHIP COMPANY, IN CASE NO. 3168—Filed January 4, 1934

To the Honorable the Judges of said Court:

And now comes Great Lakes Transit Corporation and for its Answer to the libel and complaint of Interstate Steamship Company:

First. Admits the allegations contained in Article numbered "I" of said libel and complaint.

Second. Admits the allegations contained in Article numbered "II" of said libel and complaint.

Third. Admits the allegations contained in Article numbered "III" of said libel and complaint.

Fourth. Admits that on the 11th day of August, 1933, the Steamer "Willis L. King" was on a voyage from Superior, Wisconsin, to Huron, Ohio, laden with iron ore, and that as she was coming down the St. Clair River after 5 o'clock in the afternoon on said date abreast Port Huron, a heavy squall with wind and rain came up, and that the weather was thick from rain and fog, and that a fog signal was heard from an upbound steamer, and that the Steamer "King" answered with a fog whistle, and that in the collision therein mentioned considerable damage was sustained by both the Steamer "Willis L. King" and the Steamer

"George D. Dixon," and that the Steamer "Dixon" grounded on the Canadian shore, and that the Steamer "King" stopped at a dock on the American side, and denies that it has any knowledge or information sufficient to form a belief as to whether prior to said collision the Steamer "King" was staunch, strong or seaworthy, and as to whether she had a full complement of officers or crew, and with respect to the remaining allegations contained in Article numbered "IV" of said libel and complaint, alleges upon information and belief, that they are false and untrue and are therefore denied, and says that the true facts are as hereinafter set forth.

Fifth. Upon information and belief, denies each and every allegation contained in Article numbered "V" of said libel and complaint.

[fol. 7] Sixth. Admits that the Steamer "Willis L. King" sustained damages, and that the steamer was delayed for the making of repairs, and denies that it has any knowledge or information sufficient to form a belief as to the extent of said damage and delay, and as to the cost of repairs, and as to the value of the use of said steamer during delay for repairs and, upon information and belief, denies that said collision or damage or delay were the result of any negligence of the Steamer "George D. Dixon," her officers or crew and, upon information and belief, denies that libellant has a lien on said Steamer "George D. Dixon" in the amount claimed, or in any other amount.

Seventh. Admits the admiralty and maritime jurisdiction of this Honorable Court, and upon information and belief denies that all or singular the premises of the said libel and complaint are true.

Further answering the allegations of said libel and complaint, alleges upon information and belief:

Eighth. That about 5:30 P. M. in the afternoon of August 11th, 1933, as the Steamer "George D. Dixon," being then stout, staunch and in all respects seaworthy, and manned with a full complement of officers and crew properly stationed and attentive to their duties, and laden with a cargo of sugar, rubber and general merchandise, was proceeding up the St. Clair River and about to come abreast the City of Port Huron, the weather became thick from heavy rain

and fog, and the Steamer "Dixon" at once reduced her speed to moderate speed and commenced the blowing of fog whistles; that the fog whistle of a steamer which proved to be the Steamer "Willis L. King" was then heard from up the river, and the "Dixon" responded with a fog signal and proceeded with caution under bare steerageway; thereupon, a one blast passing signal was heard from the "King," to which the "Dixon" responded with a one blast passing signal and directed her course to starboard in accordance therewith, and again blew her fog signal, continuing with caution and under bare steerageway, and while so directing her course to starboard there were two further exchanges of one blast passing signals between the Steamer "King" and the Steamer "Dixon," and the "Dixon" was proceeding slowly to starboard so that she was headed onto the Canadian shore and was well on the Canadian side of the river, when suddenly the Steamer "King" showed up close off the port [fol. 8] side of the Steamer "Dixon," coming at a high and unlawful rate of speed, and as she showed up the Steamer "King" blew a danger signal and a two blast passing signal, but she was so close upon the Steamer "Dixon" and coming at such a rate of speed that the "Dixon" was helpless to prevent the collision, and there was no time or opportunity for her to do other than to continue on her course toward the Canadian bank, and she blew a one blast signal indicating that course; that the Steamer "King," coming at a high and unlawful speed, struck stem on the port side of the Steamer "Dixon" about amidships, and that the Steamer "King" struck the "Dixon" with such force that her stem cut into and damaged plating on the port side of the "Dixon," damaged frames, buckled her decks, damaged her refrigerator house, and disabled the shaft of her steering gear.

That the said collision occurred abreast of the City of Port Huron but close to the Canadian shore, and the "Dixon" brought up on said shore bow on, and let go anchor and drifted downstream some distance and fetched up with her starboard side along the bank of the Canadian shore.

Ninth. Upon information and belief, that said collision occurred in waters with respect to which the Secretary of War by regulation duly adopted has provided that except

as to vessels under 100 gross tons and vessels making local stops, downbound vessel are required to navigate in the American channel and upbound vessels in the Canadian channel.

Tenth. That said collision occurred without any fault or want of care on the part of the Steamer "Dixon," or those engaged in her navigation, and reserving the right to urge such other and further faults as may appear upon a full hearing of this cause, that said collision was solely the result of faults and negligence of those engaged in navigating the Steamer "Willis L. King" in the following particulars:

(1) In that her master and crew were careless and inattentive to their duties.

(2) In that she maintained no proper lookout.

(3) In that she failed to navigate at a moderate speed on encountering thick weather.

(4) In that she failed to reduce her speed to bare steerageway, and failed to navigate with caution on hearing the Steamer "Dixon."

[fols. 9-14] 5. In that she failed to direct her course to starboard, in accordance with passing signals exchanged between the "King" and the "Dixon."

(6) In that she came into waters rightfully belonging to the Steamer "Dixon" for her navigation.

(7) In that she left the waters which she was bound to keep in as a downbound vessel, and came into the waters reserved for upbound vessels, in violation of regulation pertaining to said waters.

(8) In that she violated Rules 15, 17, 23, 26, 27 and 28 of the Act of Congress known as the White Law.

(9) In that she was navigated at and struck the Steamer "Dixon" while going at a negligent and unlawful rate of speed.

(10) In that her navigation was entirely without caution, and in gross disregard of the rules of navigation and prudent seamanship and the rights of others.

Wherefore, Respondent prays that the libel and complaint of said Interstate Steamship Company herein may be dismissed, and that respondent may go hence with its costs, and for such other and further relief as to law and justice may appertain.

Great Lakes Transit Corporation, by R. M. Russell, Treasurer. Brown, Ely & Richards, Proctors for Respondent, Office and P. O. Address, 1317 Chamber of Commerce, Buffalo, New York.

Duly sworn to by R. M. Russell. Jurat omitted in printing.

[fol. 15] In United States District Court, Northern District of Ohio, Eastern Division, ss.

Caption

Case No. 3170

Record of the proceedings of the District Court of the United States within and for the Eastern Division of the Northern District of Ohio, in the cause and matter hereinafter stated, the same being finally disposed of at a regular term of said court begun and held at the City of Cleveland, in said district, on the first Tuesday in April, being the 3rd day of said month, in the year of our Lord one thousand nine hundred and thirty-four and in the one hundred and fifty-eighth year of the Independence of the United States of America, to-wit, on Friday, the 27th day of July, A. D. 1934.

Present: Honorable S. H. West, U. S. District Judge.

No. 3170. Admiralty

GREAT LAKES TRANSIT CORPORATION, as Owner of the Steamer "George D. Dixon," and as Carrier and/or Bailee of Cargo Lately Laden on the Steamer "George D. Dixon,"

vs.

THE STEAMER WILLIS L. KING, Her Engines, Boilers, Boats, Machinery, Tackle, Apparel and Furniture,

and

INTERSTATE STEAMSHIP COMPANY, a Corporation,

GREAT LAKES TRANSIT COMPANY (Impleaded Respondent)

Intervenors:

Atlantic Mutual Insurance Company;
Home Insurance Company;
Union Marine & General Insurance Company (U. S.);
Sun Insurance Company (U. S.);
Eagle Star and British Dominions (U. S.);
Firemen's Fund Insurance Company;
Great American Insurance Company;
Lloyds, London;
Edinburgh Assurance Company;
British Traders' Insurance Company;
Royal Exchange Assurance;
Cornhill Insurance Company;
Sun Insurance Office;
Economic Insurance Company;
London Assurance.

[fol. 16] IN UNITED STATES DISTRICT COURT

LIBEL OF GREAT LAKES TRANSIT CORPORATION AGAINST STEAMER "WILLIS L. KING" AND INTERSTATE STEAMSHIP COMPANY, IN CASE No. 3170—Filed January 25, 1934

To the Honorable the District Judges of the United States for the Northern District of Ohio:

The libel and complaint of Great Lakes Transit Corporation, as owner of the Steamer "George D. Dixon" and as

carrier and/or bailee of cargo lately laden on the Steamer "George D. Dixon," against the Steamer "Willis L. King," her engines, boilers, boats, machinery, tackle, apparel and furniture, and Interstate Steamship Company, a corporation, in a cause of collision, civil and maritime, respectfully alleges and propounds as follows:

First. Libellant, Great Lakes Transit Corporation, is and at all times herein mentioned was, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and engaged in the common carriage by water upon the Great Lakes of goods and merchandise, and is and at all times herein mentioned was the sole owner of the Steamer "George D. Dixon," her engines, boilers, boats, machinery, tackle, apparel and furniture, and that no other person or corporation has any interest in said Steamer "George D. Dixon" as owner.

Second. That the Steamer "Willis L. King" is a vessel of the United States, and at the times herein mentioned was engaged in commerce and navigation upon the Great Lakes and their connecting and tributary waters, and is now within the jurisdiction of this Honorable Court.

Third. Upon information and belief, that Interstate Steamship Company is and at all times herein mentioned was a corporation of the State of West Virginia, and owner and operator of the said Steamer "Willis L. King."

Fourth. That on the 9th day of August, 1933, the Steamer "George D. Dixon," with cargo laden thereon, departed the Port of Buffalo, New York, on a voyage for Milwaukee and Chicago, intending to stop at Erie, Detroit and Windsor [fol. 17] for additional cargo, and after stopping at said ports, the said vessel departed the Port of Windsor on the 10th day of August, 1933, and that she was laden with cargo consisting of sugar, rubber, package goods, and other goods and merchandise.

Fifth. That about 5:30 P. M. in the afternoon of August 11th, 1933, as the Steamer "George D. Dixon," being then stout, staunch and in all respects seaworthy, and manned with a full complement of officers and crew properly stationed and attentive to their duties, and laden as aforesaid, was proceeding up the St. Clair River and about to come

abreast the City of Port Huron, the weather became thick from heavy rain and fog, and the Steamer "Dixon" at once reduced her speed to moderate speed and commenced the blowing of fog whistles; that the fog whistle of a steamer which proved to be the Steamer "Willis L. King" was then heard from up the river, and the "Dixon" responded with a fog signal and proceeded with caution under bare steerageway; thereupon, a one blast passing signal was heard from the "King," to which the "Dixon" responded with a one blast passing signal and directed her course to starboard in accordance therewith, and again blew her fog signal, continuing with caution and under bare steerageway, and while so directing her course to starboard there were two further exchanges of one blast passing signals between the Steamer "King" and the Steamer "Dixon," and the "Dixon" was proceeding slowly to starboard so that she was headed onto the Canadian shore and was well on the Canadian side of the river, when suddenly the Steamer "King" showed up close off the port side of the Steamer "Dixon," coming at a high and unlawful rate of speed, and as she showed up the Steamer "King" blew a danger signal and a two blast passing signal, but she was so close upon the Steamer "Dixon" and coming at such a rate of speed that the "Dixon" was helpless to prevent the collision, and there was no time or opportunity for her to do other than to continue on her course toward the Canadian bank, and she blew a one blast signal indicating that course; that the Steamer "King," coming at a high and unlawful speed, struck stem on the port side of the Steamer "Dixon" about amidships, and that the Steamer "King" struck the "Dixon" with such force that her stem cut into and damaged plating on the port side of the "Dixon," damaged frames, buckled her decks, damaged her refrigerator house, [fol. 18] and disabled the shaft of her steering gear.

That the said collision occurred abreast of the City of Port Huron but close to the Canadian shore, and the "Dixon" brought up on said shore bow on, and let go anchor and drifted downstream some distance and fetched up with her starboard side along the bank of the Canadian shore.

Sixth. Upon information and belief, that said collision occurred in waters with respect to which the Secretary of

War by regulation duly adopted has provided that except as to vessels under 100 gross tons and vessels making local stops, downbound vessels are required to navigate in the American channel and upbound vessels in the Canadian channel.

Seventh. That said collision occurred without any fault or want of care on the part of the Steamer "Dixon," or those engaged in her navigation, and reserving the right to urge such other and further faults as may appear upon a full hearing of this cause, that said collision was solely the result of faults and negligence of those engaged in navigating the Steamer "Willis L. King" in the following particulars:

(1) In that her master and crew were careless and inattentive to their duties.

(2) In that she maintained no proper lookout.

(3) In that she failed to navigate at a moderate speed on encountering thick weather.

(4) In that she failed to reduce her speed to bare steerageway, and failed to navigate with caution on hearing the Steamer "Dixon."

(5) In that she failed to direct her course to starboard, in accordance with passing signals exchanged between the "King" and the "Dixon."

(6) In that she came into waters rightfully belonging to the Steamer "Dixon" for her navigation.

(7) In that she left the waters which she was bound to keep in as a downbound vessel, and came into the waters reserved for upbound vessels, in violation of regulation pertaining to said waters.

[fol. 19] (8) In that she violated Rules 15, 17, 23, 26, 27 and 28 of the Act of Congress known as the White Law.

(9) In that she was navigated at and struck the Steamer "Dixon" while going at a negligent and unlawful rate of speed.

(10) In that her navigation was entirely without caution, and in gross disregard of the rules of navigation and prudent seamanship and the rights of others.

Eighth. Upon information and belief, that as result of the collision, the Steamer "Dixon" commenced to take in water through her port side, and the services of a diver were employed to temporarily stop the leaks, and said vessel was so severely damaged that it was necessary and advisable that the vessel transfer her cargo for forwarding, and after making temporary repairs to her steering gear to enable her to navigate the vessel, after stopping at Port Huron, returned to Detroit and made fast at her terminal dock at that port, and her cargo was thereupon discharged; that some of her cargo was damaged through water gaining entrance through port side of the vessel where the port side was damaged from the collision, and some of the cargo became damaged from the force of the collision, and some became damaged from water through the breaking of a pipe in sanitary line in the collision and through the opening up of the deck of the vessel in the collision so that outside moisture got in and upon the cargo; that it was found necessary and advisable to dispose of some of the cargo without forwarding to destination, and the balance was loaded into the Steamer "William J. Conners," employed for that purpose and carried to destination.

Ninth. Upon information and belief, that solely as a result of the faults and negligence of the Steamer "Willis L. King," and the servants and agents of the Interstate Steamship Company in the navigation of said steamer as aforesaid, the Steamer "Dixon" was severely damaged in and about her plates, frames, decks, houses and other parts of the vessel in the collision, and was damaged in the course of unloading and transferring cargo, and libellant was put to expense in accomplishing the safe return of said steamer to Detroit and making transfer of cargo, in the employ-
[fol. 20] ment of the Steamer "William J. Conners" to deliver said cargo to destination, and lost the earnings of the Steamer "George D. Dixon" on the voyage on which she was engaged at the time of said collision, and was deprived of her use and earnings during the period in which repair was made of the damage resulting from the collision, and the cargo of said steamer sustained loss and large damage, so that libellant, individually, in respect of the aforesaid damage to the Steamer "Dixon," loss of earnings and use, and expenses, and cargo loss and damage and as car-

rier and/or bailee of the said cargo, has sustained damage in a sum as nearly as the same can now be estimated, amounting to One Hundred Twenty Thousand Dollars ($120,000.00) and interest, for which amount libellant has and claims a lien against the Steamer "Willis L. King," her engines, boilers, boats, machinery, tackle, apparel and furniture.

Tenth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore, libellant prays:

(1) That process in due form of law according to the rules and practice of this Honorable Court in causes of admiralty and maritime jurisdiction may issue against the Steamer "Willis L. King," her engines, boilers, boats, machinery, tackle, apparel and furniture, and against any and all persons having or claiming to have any interest therein; that they may be cited to appear and answer all and singular the matters aforesaid;

(2) That citation in due form of law may issue against respondent, Interstate Steamship Company, citing it to appear and answer all and singular the matters aforesaid, and that if it cannot be found within this District, that its goods and chattels within this District may be attached by process of foreign attachment for the sum sued for in this libel, with interest and costs;

(3) That a decree may be entered herein in favor of the libellant against the said respondent and against the said Steamer "Willis L. King," her engines, boilers, etc., for the amount of libellant's damages, as set forth, together with interest thereon, and libellant's costs and disbursements, and that the said steamer, her engines, etc. may be condemned and sold to pay the same;

[fol. 21] (4) And that the Court will grant the libellant such other and further relief in the premises as in law and justice it may be entitled to receive.

Great Lakes Transit Corporation, Libellant, by W. R. Evans, Comptroller. Brown, Ely & Richards, and Stanley & Gidley, Buffalo, New York, Proctors for Libellant.

Duly sworn to by W. R. Evans. Jurat omitted in printing.

[fol. 22] IN UNITED STATES DISTRICT COURT

CLAIM OF RESPONDENT AND CLAIMANT, INTERSTATE STEAMSHIP COMPANY, IN CASE NO. 3170—Filed February 13, 1934

Now comes Interstate Steamship Company, and for its claim herein alleges that it is a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia and is the sole, true and lawful owner of the Steamer Willis L. King, her engines, boilers, boats, machinery, tackle, apparel and furniture, and prays that it be allowed to defend herein accordingly.

Interstate Steamship Company, by Holding, Duncan & Leckie. Holding, Duncan & Leckie, Proctors for Respondent and Claimant, Interstate Steamship Company.

Duly sworn to by Lee C. Hinslea. Jurat omitted in printing.

[fol. 23] IN UNITED STATES DISTRICT COURT

ANSWER TO LIBEL FILED BY GREAT LAKES TRANSIT CORPORATION, IN CASE NO. 3170—Filed February 13, 1934

To the Honorable the Judges of said Court:

Now comes the Interstate Steamship Company, a corporation, as claimant for the Steamer Willis L. King and as respondent, and for its answer to the libel and complaint of Great Lakes Transit Corporation, as owner of the Steamer George D. Dixon and as carrier and/or bailee of cargo lately laden on the Steamer George D. Dixon, says:

I

It admits the allegations contained in Article First of said libel and complaint.

II

It admits the allegations contained in Article Second of said libel and complaint.

III

It admits the allegations contained in Article Third of said libel and complaint.

IV

Having no information as to the allegations contained in Article Fourth of said libel and complaint, it denies each and every allegation contained in said Article Fourth of said libel and complaint.

V

It admits that on August 11, 1933, said Steamer George D. Dixon was proceeding up the St. Clair River when the weather became thick from heavy rain and fog, and further admits that said Steamer Willis L. King and Steamer George D. Dixon were in a collision, but the other allegations of said Article Fifth are for the most part wrongly stated and are therefore denied, and claimant and respondent says that the true facts are as hereinafter set forth.

VI

Upon information and belief, respondent and claimant denies each and every allegation contained in Article Sixth of said libel and complaint.

[fol. 24]

VII

Upon information and belief, respondent and claimant denies each and every allegation contained in Article Seventh of said libel and complaint.

VIII

Claimant and respondent while admitting that the Steamer George D. Dixon sustained some damage by reason of said collision does not have knowledge or information respecting the allegations of Article Eighth of the libel and complaint and therefore denies the same and demands strict proof thereof.

IX

Claimant and respondent while admitting that the Steamer George D. Dixon sustained some damage by rea-

son of said collision, does not have sufficient knowledge or information to form a belief as to the extent of the damage or any of the other allegations contained in said Article Ninth of said libel and complaint and therefore denies the same, and demands strict proof thereof.

X

Claimant and respondent deny the allegations of Article Tenth except admitting the jurisdiction of this Honorable Court.

XI

Further answering the allegations of said libel and complaint claimant and respondent alleges upon information and belief that the facts regarding said collision are that on the 11th day of August, 1933, its said Steamer Willis L. King, being then and at all times hereinafter mentioned, staunch, strong and seaworthy, with a full complement of officers and crew properly stationed and attentive to their duties, was on a voyage from Superior, Wisconsin, to Huron, Ohio, laden with iron ore; when coming down St. Clair River a little after 5:00 P. M. on said date, and approaching the mouth of Black River, at Port Huron, a one-blast bend of berth whistle was blown, when past Black River a heavy squall with wind, rain and dark atmosphere was seen below, whereupon the King was checked to moderate speed; shortly a fog whistle was heard from an upbound steamer on the starboard bow, whereupon the King [fol. 25] answered with a fog whistle and then blew to her a two-blast passing signal; no answer was heard but shortly thereafter it cleared some and a steamer, which afterward proved to be the George D. Dixon, was seen coming upriver on a parallel course to the King and about a point and a half on the King's starboard bow, so that the steamers were in position to pass starboard to starboard; another two-blast passing signal was then blown by the King to the Dixon and the King starboarded some, but instead of the Dixon continuing as they were in perfect safety starboard to starboard, she was observed to start swinging toward the King, whereupon the King blew an alarm signal, backed full speed and blew another two-blast; the Dixon, instead of staying on her own side or stopping or backing, continued on her swing toward the King and came across

the King's bow at high speed, catching the King's bow about one-half of the way back on the Dixon's port side, doing considerable damage to both ships, and then continued on over onto the Canadian shore; the King stood by until it was seen that those on the Dixon were in no danger, when she proceeded on, stopping at a dock on the American side below.

XII

Claimant and respondent further alleges that said collision and damage occurred without any fault or negligence on the part of its said Steamer Willis L. King, or her officers or crew, but on the contrary was occasioned and occurred solely by and through the fault and negligence of the said Steamer George D. Dixon and those who were then and there in charge of her; and not having full knowledge of all that occurred on board said Steamer George D. Dixon and therefore reserving the right to claim the benefit of any other faults which may develop on full hearing, now charges that said Steamer George D. Dixon, her officers and crew, were in fault in the following particulars:

1. That those in charge of her navigation were incompetent, negligent and inattentive to their duties.

2. That she failed to maintain proper and efficient lookout.

3. That she maintained too high a rate of speed under the conditions prevailing.

4. That when in a situation to pass starboard to starboard in perfect safety she, in the face of repeated two-[fols. 26-33] blast whistles and alarm signals, sheered or steered from such position across the bow of the King.

5. That she did not timely check or stop or reverse or use any means to avoid said collision.

Wherefore claimant and respondent prays that the libel and complaint of said Great Lakes Transit Corporation herein may be dismissed and that claimant and respondent may go hence with its costs, and for such other and further relief as to law and justice may appertain.

Interstate Steamship Company, by Holding, Duncan & Leckie. Holding, Duncan & Leckie, Proctors for Respondent and Claimant, Interstate Steamship Company.

Duly sworn to by Lee C. Hinslea. Jurat omitted in printing.

[fol. 34] IN UNITED STATES DISTRICT COURT

PETITION UNDER THE 56TH ADMIRALTY RULE TO BRING IN GREAT LAKES TRANSIT CORPORATION, OWNER OF THE STEAMER GEORGE D. DIXON, AS CARRIER AND/OR BAILEE OF CARGO TO ANSWER CARGO CLAIM, IN CASE NO. 3170—Filed February 13, 1934

To the Honorable, the Judges of said Court:

The petition of the Interstate Steamship Company, as owner and claimant of the steamer Willis L. King, and as respondent, respectfully shows:

[fol. 35] I

That petitioner is a corporation organized and existing under and by virtue of the laws of the state of West Virginia, and is and was at all times mentioned herein, sole owner of the steamer Willis L. King, her engines, boilers, boats, machinery, tackle, apparel and furniture, and that no other person or corporation has or had any interest therein as owner.

II

That on or about the 25th day of January, 1934, a libel was filed in this Court by Great Lakes Transit Corporation, owner of the steamer George D. Dixon, as carrier and/or Bailee of cargo lately laden on the steamer George D. Dixon, as libelant, against the steamer Willis L. King and the Interstate Steamship Company, a corporation, claiming that on the 11th day of August, 1933, while said steamer George D. Dixon was laden with a cargo of sugar, rubber, package goods and other goods and merchandise, and bound up the St. Clair River, said cargo sustained considerable damage as a result of a collision between said steamer Willis L. King and said steamer George D. Dixon, and as a result of said injury is claiming damages and cargo loss, the exact amount of which is not stated in the libel, the allegation of the libel being that the total damage to the steamer Dixon and to cargo amounted, as nearly as could be estimated, to $120,000.00, but petitioner avers that it is informed that libelant claims a considerable proportion of the total claimed dam-

age and loss to have been damage to and loss of cargo; said libel further alleges that said collision and the resulting damages and loss were due solely to the negligence, carelessness and want of skill of those in charge of the said steamer Willis L. King in the particulars in said libel set forth.

III

That the facts regarding said collision are that on the 11th day of August, 1933, the said steamer Willis L. King, being then and at all times hereinafter mentioned, staunch, strong and seaworthy, with a full complement of officers and crew properly stationed and attentive to their duties, was on a voyage from Superior, Wisconsin, to Huron, Ohio, laden with iron ore; that when coming down St. Clair River a little after 5:00 P. M. on said date, and approaching the [fol. 36] mouth of Black River, at Port Huron, a one-blast bend or berth whistle was blown; when past Black River a heavy squall with wind, rain and dark atmosphere was seen below, whereupon the King was checked to moderate speed; shortly a fog whistle was heard from an upbound steamer on the starboard bow, whereupon the King answered with a fog whistle and then blew to her a two-blast passing signal; no answer was heard but shortly thereafter it cleared some and a steamer, which afterward proved to be the George D. Dixon, was seen coming upriver on a parallel course to the King and about a point and a half on the King's starboard bow, so that the steamers were in position to pass starboard to starboard; another two-blast passing signal was then blown by the King to the Dixon and the King starboarded some, but instead of the Dixon continuing as they were in perfect safety starboard to starboard, she was observed to start swinging toward the King whereupon the King blew an alarm signal, backed full speed and blew another two-blast; the Dixon, instead of staying on her own side or stopping or backing, continued on her swing toward the King and came across the King's bow at high speed, catching the King's bow about one-half of the way back on the Dixon's port side, doing considerable damage to both ships, and then continued on over onto the Canadian shore; the King stood by until it was seen that those on the Dixon were in no danger, when she proceeded on, stopping at a dock on the American side below.

IV

Petitioner, on information and belief, alleges that said collision occurred without any fault or negligence on the part of said steamer Willis L. King or her officers or crew, but on the contrary was occasioned and occurred solely by and through the fault and negligence of the steamer George D. Dixon and those who were then and there in charge of her, and reserving the right to urge such other and further faults as may appear upon a full hearing of this cause, now charges that the steamer George D. Dixon was at fault for said collision in the following particulars:

1. That those in charge of her navigation were incompetent, negligent and inattentive to their duties.

[fol. 37] 2. That she failed to maintain proper and efficient lookout.

3. That she maintained too high a rate of speed under the conditions prevailing.

4. That when in a situation to pass starboard to starboard in perfect safety, she, in the face of repeated two-blast whistles and alarm signals, sheered or steered from such position across the bow of the King.

5. That she did not timely check or stop or reverse or use any means to avoid said collision.

V

That said collision and any damage or cargo loss sustained on account thereof by the Great Lakes Transit Corporation as carrier and/or bailee of cargo laden on said Steamer George D. Dixon, were solely the result of the fault and negligence of the steamer George D. Dixon, and those in charge of her, as hereinabove set forth; and that said Great Lakes Transit Corporation, the owner of said steamer George D. Dixon, as carrier and/or bailee of cargo lately laden on said steamer George D. Dixon, being the same cargo on board said steamer George D. Dixon when that vessel was in the collision with the steamer Willis L. King that is mentioned in the libel, ought to be proceeded against in this suit.

VI

That service has been had upon Great Lakes Transit Corporation, owner of the steamer George D. Dixon, in an action in admiralty in this Court, No. 3168, brought by said Interstate Steamship Company, as owner of the steamer Willis L. King to recover on account of the same collision mentioned in this petition; and that cause is to be consolidated with this for trial, and that said Great Lakes Transit Corporation is within the jurisdicton of ths Honorable Court.

VII

That all and singlar the premises are true and within the jurisdiction of this Honorable Court.

Wherefore, petitioner prays that process in due form of law and according to the course and practice of this Honorable Court in causes of admiralty and maritime jurisdiction [fol. 38] and in accordance with Rule 56 of the Rules of Admiralty prescribed by the Supreme Court of the United States, may issue against the said Great Lakes Transit Corporation, owner of the steamer George D. Dixon, as carrier and/or bailee of cargo lately laden on said steamer George D. Dixon, being the same cargo on board said steamer George D. Dixon when that vessel was in the collision with the steamer Willis L. King that is mentioned in the libel, citing it to appear and answer all and singular the premises, and particularly to answer this petition; that this Court will dismiss the libel against the steamer Willis L. King and Interstate Steamship Company, and will hold the Great Lakes Transit Corporation and/or the steamer George D. Dixon solely at fault and responsible for said collision, and that it will make such other and further order and decree as to law and justice may appertain.

Interstate Steamship Company, by Holding, Duncan & Leckie. Holding, Duncan & Leckie, 1970 Union Trust Building, and Thomas H. Garry, Proctors for Interstate Steamship Company.

Duly sworn to by Lee C. Hinslea. Jurat omitted in printing.

[fol. 39] IN UNITED STATES DISTRICT COURT

ANSWER OF GREAT LAKES TRANSIT CORPORATION AS OWNER OF THE STEAMER "GEORGE D. DIXON," AND AS IMPLEADED RESPONDENT, TO ITS LIBEL AND COMPLAINT AS CARRIER AND/OR BAILEE OF CARGO, IN CASE No. 3170—Filed February 15, 1934

To the Honorable the District Judges of the United States for the Northern District of Ohio:

And now comes Great Lakes Transit Corporation, as owner of the Steamer "George D. Dixon," and as impleaded respondent under the petition of the Interstate Steamship Company under the 56th Admiralty Rule to bring in said Great Lakes Transit Corporation as owner of the Steamer "George D. Dixon" to answer cargo claim, for its answer to its own libel and complaint as carrier and/or bailee of cargo lately laden on the Steamer "George D. Dixon":

Admits each and every allegation of the libel and complaint of Great Lakes Transit Corporation, as owner of the Steamer "George D. Dixon," and as carrier and/or bailee of cargo lately laden on the Steamer "George D. Dixon."

Wherefore, said Great Lakes Transit Corporation prays for the relief asked for in said libel and complaint, and that the petition of said Interstate Steamship Company may be dismissed, and for such other and further relief as to law and justice may appertain.

Great Lakes Transit Corporation, by W. R. Evans, Comptroller. Brown, Ely & Richards, 1317 Chamber of Commerce, Buffalo, New York, and Stanley & Gidley, Marine Trust Building, Buffalo, New York, Proctors for Great Lakes Transit Corporation.

[fol. 40] *Duly sworn to by W. R. Evans. Jurat omitted in printing.*

In United States District Court

Answer of Great Lakes Transit Corporation to the Petition of Interstate Steamship Company under the 56th Admiralty Rule to Bring in Great Lakes Transit Corporation to Answer Cargo Claim, in Case No. 3170—Filed February 15, 1934

To the Honorable the District Judges of the United States for the Northern District of Ohio:

And now comes Great Lakes Transit Corporation, as Owner of the Steamer "George D. Dixon," and for its answer to the petition of Interstate Steamship Company under the 56th Admiralty Rule to bring in Great Lakes [fol. 41] Transit Corporation, owner of the Steamer "George D. Dixon" as carrier and/or bailee of cargo, to answer cargo claim:

First. Admits the allegations contained in Article numbered "I" of said petition.

Second. Admits the allegations contained in Article numbered "II" of said petition.

Third. Admits that on the 11th day of August, 1933, the Steamer "Willis L. King" was on a voyage from Superior, Wisconsin, to Huron, Ohio, laden with iron ore, and that as she was coming down the St. Clair River after 5 o'clock in the afternoon on said date abreast Port Huron, a heavy squall with wind and rain came up, and that the weather was thick from rain and fog, and that a fog signal was heard from an upbound steamer, and that the Steamer "King" answered with a fog whistle, and that in the collision therein mentioned considerable damage was sustained by both the Steamer "Willis L. King" and the Steamer "George D. Dixon," and that the Steamer "Dixon" grounded on the Canadian shore, and that the Steamer "King" stopped at a dock on the American side, and denies that it has any knowledge or information sufficient to form a belief as to whether prior to said collision the Steamer "King" was staunch, strong or seaworthy, and as to whether she had a full complement of officers or crew, and with respect to the remaining allegations contained in Article numbered "III" of said petition, alleges upon information and belief, that they are false and un-

true and are therefore denied, and says that the true facts are as hereinafter set forth.

Fourth. Upon information and belief, denies each and every allegation contained in Article numbered "IV" of said petition.

Fifth. Upon information and belief, denies each and every allegation contained in Article numbered "V" of said petition.

Sixth. Admits the allegations contained in Article numbered "VI" of said petition.

Seventh. Admits the jurisdiction of this Honorable Court, and upon information and belief, denies that all or singular the premises of said petition are true.

Further answering the allegations of said petition, alleges upon information and belief:

[fol. 42] Eighth. That about 5:30 P. M. in the afternoon of August 11th, 1933, as the Steamer "George D. Dixon," being then stout, staunch and in all respects seaworthy, and manned with a full complement of officers and crew properly stationed and attentive to their duties, and laden with a cargo of sugar, rubber and general merchandise, was proceeding up the St. Clair River and about to come abreast the City of Port Huron, the weather became thick from heavy rain and fog, and the Steamer "Dixon" at once reduced her speed to moderate speed and commenced the blowing of fog whistles; that the fog whistle of a steamer which proved to be the Steamer "Willis L. King" was then heard from up the river, and the "Dixon" responded with a fog signal and proceeded with caution under bare steerageway; thereupon, a one blast passing signal was heard from the "King," to which the "Dixon" responded with a one blast passing signal and directed her course to starboard in accordance therewith, and again blew her fog signal, continuing with caution and under bare steerageway, and while so directing her course to starboard there were two further exchanges of one blast passing signals between the Steamer "King" and the Steamer "Dixon," and the "Dixon" was proceeding slowly to starboard so that she was headed onto the Canadian shore and was well on the Canadian side of the river, when suddenly the Steamer "King" showed up close off the port side of the Steamer

"Dixon," coming at a high and unlawful rate of speed, and as she showed up the Steamer "King" blew a danger signal and a two blast passing signal, but she was so close upon the Steamer "Dixon" and coming at such a rate of speed that the "Dixon" was helpless to prevent the collision, and there was no time or opportunity for her to do other than to continue on her course toward the Canadian bank, and she blew a one blast signal indicating that course; that the Steamer "King," coming at a high and unlawful speed, struck stem on the port side of the Steamer "Dixon" about amidships, and that the Steamer "King" struck the "Dixon" with such force that her stem cut into and damaged plating on the port side of the "Dixon," damaged frames, buckled her decks, damaged her refrigerator house, and disabled the shaft of her steering gear.

That the said collision occurred abreast of the City of Port Huron but close to the Canadian shore, and the "Dixon" brought up on said shore bow on, and let go [fol. 43] anchor and drifted downstream some distance and fetched up with her starboard side along the bank of the Canadian shore.

Ninth. Upon information and belief, that said collision occurred in waters with respect to which the Secretary of War by regulation duly adopted has provided that except as to vessels under 100 gross tons and vessels making local stops, downbound vessels are required to navigate in the American channel and upbound vessels in the Canadian channel.

Tenth. That said collision occurred without any fault or want of care on the part of the Steamer "Dixon," or those engaged in her navigation, and reserving the right to urge such other and further faults as may appear upon a full hearing of this cause, that said collision was solely the result of faults and negligence of those engaged in navigating the Steamer "Willis L. King" in the following particulars:

1. In that her master and crew were careless and inattentive to their duties.

2. In that she maintained no proper lookout.

3. In that she failed to navigate at a moderate speed on encountering thick weather.

4. In that she failed to reduce her speed to bare steerageway, and failed to navigate with caution on hearing the Steamer "Dixon."

5. In that she failed to direct her course to starboard, in accordance with passing signals exchanged between the "King" and the "Dixon."

6. In that she came into waters rightfully belonging to the Steamer "Dixon" for her navigation.

7. In that she left the waters which she was bound to keep in as a downbound vessel, and came into the waters reserved for upbound vessels, in violation of regulation pertaining to said waters.

8. In that she violated Rules 15, 17, 23, 26, 27 and 28 of the Act of Congress known as the White Law.

9. In that she was navigated at and struck the Steamer "Dixon" while going at a negligent and unlawful rate of speed.

10. In that her navigation was entirely without caution, and in gross disregard of the rules of navigation and pru-
[fols. 44-54] dent seamanship and the rights of others.

Wherefore, said Great Lakes Transit Corporation prays that the said petition of Interstate Steamship Company be dismissed with costs, and for such other and further relief as to law and justice may appertain.

Great Lakes Transit Corporation, by W. R. Evans, Comptroller. Brown, Ely & Richards, 1317 Chamber of Commerce, Buffalo, New York, and Stanley & Gidley, Marine Trust Building, Buffalo, New York, Proctors for Great Lakes Transit Corporation.

Duly sworn to by W. R. Evans. Jurat omitted in printing.

[fol. 55] IN UNITED STATES DISTRICT COURT

TRIAL TO COURT ON PLEADINGS AND EVIDENCE; ORDER OF CONSOLIDATION OF CASE NO. 3168 WITH 3170; ALL OF TESTIMONY ADDUCED ON BEHALF OF LIBELLANT AND PART OF TESTIMONY ON BEHALF OF RESPONDENT; ADJOURNMENT

(Entered February 15, 1934, by S. H. West, Judge)

Case No. 3168

This day came the parties by their proctors, and this cause came on for final hearing on the pleadings and the evidence. And the Court having heard the opening statement of counsel, thereupon, pursuant to oral stipulation of the parties, this case was ordered consolidated with case No. 3170 Admiralty. And the Court having heard all of the testimony adduced in chief on behalf of the libellant, and a part of the testimony in chief adduced on behalf of the respondent, and the hour for adjournment having arrived, the further trial of this cause was postponed until tomorrow morning at 9:30 o'clock.

IN UNITED STATES DISTRICT COURT

TRIAL TO COURT IN PROGRESS; ALL TESTIMONY ADDUCED ON BEHALF OF PARTIES CONCLUDED; ARGUMENT HAD; CAUSES TAKEN UNDER ADVISEMENT

(Entered February 16, 1934 by S. H. West, Judge)

Case No. 3168

This day again came the parties by their proctors, and these causes came on for final hearing on the pleadings and the evidence. And the Court having heard all of the testimony adduced on behalf of the parties, and the argument of counsel, took the causes under advisement. Briefs to be filed on or before March 5, 1934.

[fols. 56-241] IN UNITED STATES DISTRICT COURT

TRIAL TO COURT OF PLEADINGS AND EVIDENCE; ORDER OF CONSOLIDATION OF CASE NO. 3170 WITH 3168; HEARING PASSED ON INTERVENING PETITION OF MILKO; TESTIMONY IN CHIEF ADDUCED ON BEHALF OF INTERSTATE STEAMSHIP COMPANY; PART OF TESTIMONY ADDUCED ON BEHALF OF GREAT LAKES TRANSIT CORPORATION; ADJOURNMENT

(Entered February 15, 1934 by S. H. West, Judge)

Case No. 3170

This day came the parties by their proctors, and this cause came on for final hearing on the pleadings and the evidence. And the Court having heard the opening statement of counsel, thereupon, pursuant to oral stipulation, this case was ordered consolidated with case No. 3168 Admiralty. Thereupon, pursuant to oral stipulation, the hearing on the intervening petition of John Milko was passed, pending decision on the merits of libels and answers. And the Court having heard all of the testimony in chief adduced on behalf of Interstate Steamship Company, and a part of the testimony in chief adduced on behalf of Great Lakes Transit Corporation, and the hour for adjournment having arrived, the further trial of this cause was postponed until tomorrow morning at 9:30 o'clock.

IN UNITED STATES DISTRICT COURT

TRIAL TO COURT IN PROGRESS; ALL TESTIMONY ADDUCED ON BEHALF OF PARTIES CONCLUDED; ARGUMENT HAD; CAUSES TAKEN UNDER ADVISEMENT

(Entered February 16, 1934 by S. H. West, Judge)

Case No. 3170

This day again came the parties by their proctors, and these causes came on for final hearing on the pleadings and the evidence. And the Court having heard all of the testimony adduced on behalf of the parties, and the argument of counsel, took the causes under advisement. Briefs to be filed on or before March 5, 1934.

[fol. 242] IN UNITED STATES DISTRICT COURT

MEMORANDUM OPINION AND DECISION OF THE COURT IN CASES NOS. 3168 AND 3170—Filed March 29, 1934

WEST, J.:

Libel of Interstate Steamship Company, owner of the Steamer Willis L. King against Great Lakes Transit Corporation, owner of the Steamer George D. Dixon, for damages resulting from collision. Respondent answered denying fault and annexed interrogatories which were answered by libellant. Respondent also filed libel against the owner of the King for damages to the Dixon and her cargo. Milko, seaman on the Dixon, has intervened, claiming damages from the King for personal injuries sustained in the collision. The original libellant answered the libel of the Transit Corporation and the intervening libel of Milko; and also filed petitions under Admiralty Rule 56, claiming that the Transit Corporation was liable for any damage to Milko and the cargo of the Dixon. After the issues were made up the suits were consolidated. Under stipulation the trial concerned only questions of fault.

The King is 580 feet long, 58 feet beam and 32 feet deep, while the length of the Dixon is 350 feet, her beam 46 feet and depth 30 feet. On August 11, 1933, the King was bound down the lakes with a cargo of ore and the Dixon was proceeding from Buffalo to Chicago with a miscellaneous cargo of merchandise. The collision occurred about 5:40 p. m. on the Canadian side of St. Clair river at Port Huron-Sarnia just at the conclusion of a sudden and severe storm of wind and rain which had greatly obscured the view on the river.

The King was required to and did blow a single blast bend signal as she came down and approached the so-called Traffic Buoy located in the channel somewhat on the American side just above the mouth of Black River. No claim is made that this signal enters into the case and it needs no further mention. The ship passed between the American shore and this buoy and about 100 feet from the latter at full speed of not less than ten miles per hour, and her proctors admit in their brief that if this speed, which was in excess of the nine-mile limit (Bull. 42 p. 312), was a contributing cause of the

collision, the King cannot escape liability. As the un- [fol. 243] contradicted testimony is that she very soon checked to half speed, which would be reached in proceeding about half a mile, a considerable distance short of the point of collision, I can not find, even considering the effect of the current, that her speed immediately before the collision exceeded the nine mile limit. Capt. Watts of the King says when she passed the buoy the weather was clear with a fresh westerly wind, but that when he got a little below Black River a sudden rain squall set in which interfered with vision beyond 900 or 1000 feet, visibility decreasing down the river. He then heard a three-blast fog signal from that direction and immediately checked to half speed. He says he at once blew a passing whistle of two blasts indicating that he was directing his course to port. He testified that he heard no answer, nor any further fog signal, nor did he see the upbound ship; that after 30 or 40 seconds he repeated his two-blast passing signal, still receiving no response, and then the Dixon appeared about a point and a half on his starboard bow "in a perfect parallel line with the course we were going." The weather was then clearing. Capt. Watts testifies that he then blew a third two-blast signal, whereupon the Dixon, then some 1500 feet away, left her course and headed across the King's bow; that the King backed full speed, blew a danger signal and then another two-blast passing signal, but the Dixon, according to the witness, kept right on until she crossed the bow of the King, which struck her at an angle of 90 degrees near amidships. He says that when the Dixon came into view the King was over on the Canadian side, about 500 feet from shore, heading on a point on that shore a mile or a mile and a half down stream. This witness fixes the collision at 5:36 and locates the point about 900 or 1000 feet below the Port Huron Coal Dock shown by his mark on a chart, Lib. Ex. 1, to be across the international boundary line.

He says that just below Black River he ordered his wheelsman to head on the Mueller plant right across the river from the Port Huron Coal Dock, and proceeded until he came opposite the elevator also marked on the chart, when the storm shut out the view of the Mueller plant, the King then having reached midstream.

The first mate says the King blew three two-blast passing signals before the collision. When he saw the Dixon

she was off on the starboard not quite parallel to the King, towards which she looked to be swinging. The mate heard [fol. 244] no fog signal from either vessel, nor any sort of signal from the Dixon prior to the collision, and estimates the distance between vessels when the fog lifted, at a quarter mile.

The wheelsman of the King heard a fog signal from a vessel down the river and says Capt. Watts blew a similar signal in answer and followed it with a two-blast passing whistle, and that when this was blown the ship was heading on the Mueller plant across the river. He says the King blew three two-blast passing signals and then a danger signal, but he heard nothing from the Dixon save the first fog whistle. He saw the Dixon on a parallel course about 1200 feet away just before the danger signal and says "the Dixon didn't port her helm but was going towards starboard."

The watchman heard and reported the fog signal from down stream, heard the King answer it with three blasts, and then sound at least two two-blast signals and a danger signal. Aside from the first fog whistle he heard no signals from the Dixon.

The assistant engineer was called to testify that the King checked speed at 5:32, went full speed astern at 5:34, and struck the Dixon at 5:36, according to the slate in the engine room. The engineer was also called, but only as to matters relating to his engines. No other witness testified that the King blew two-blast passing signals, except Dr. Francois, an outside witness who saw the Dixon pass up the river, heard her blow a one-blast whistle just before she entered the storm, and from out of the storm heard a fog signal, a two-blast and another fog signal before "a conglomeration of danger signals."

On the question of whistle signals, the testimony from the crew of the Dixon is that she blew a fog signal of three blasts at a point in the river about one-half mile below Reed's dry dock, marked "R" on the chart, Respondent's Ex. A; also shown on Libellant's Ex. 1 as the Lagoon. Here a similar signal was heard from the King. A second fog signal by the Dixon was followed, according to these men, by a one-blast passing signal from the King indicating a port to port passing requested. This was answered

by one blast from the Dixon, indicating acceptance. Thereafter the Dixon directed her course to starboard on the Canadian side, and the two vessels then exchanged fog signals and at least two more one-blast passing signals. Capt. Goodberry testifies he then heard an alarm of five [fol. 245] short whistles from the King, looked out and saw her light on his port side, and then for the first time received a passing signal of two blasts; that "there was no possible chance of me giving him what he asked for, so I blew one whistle and hollered hard aport." Libellant admits the Dixon blew at least one single blast passing signal, as testified to by its own witness, Dr. Francois. Brewer, an outsider, testifies to the same fact. Geel, Snyder, and Capt. Conlin testify to several one-blast signals given by the Dixon. As one such signal is admitted, and the overwhelming weight of evidence establishes others, it must be found that at least three one-blast passing signals were sounded by the Dixon before the alarm. Capt. Watts and his men admit hearing the original fog whistle of the Dixon; but deny hearing any later fog signals or any of the one-blast passing signals. No explanation for their failure to hear is advanced, and none appears.

If they heard only the fog signal, the King was at fault in proceeding as she did at a speed of at least seven miles an hour in violation of Rule 15 requiring a moderate speed, and in not reducing to steerageway. I cannot accept the claim of these men that no other signals from the Dixon were heard. While one single passing blast might have been missed, it is incredible that none of the three were noticed.

Witnesses from the Dixon who testify that the King blew several one-blast signals instead of the two-blasts testified to by the King's crew, are corroborated by Brewer, the keeper of the Spokane, which lay near the Lagoon, and Capt. Conlin, who was employed at a shipyard along the river. Both these men are disinterested, and the latter a mariner. When the storm came up, the men at the shipyard were permitted to leave before their regular time, 5:30, and Conlin was driven up town by two employes, the Sasse brothers. Conlin testifies that driving north on Military Street the machine was stopped at Griswold for traffic and a hard rain, and he then heard a chime whistle from the river blow one blast and a minute or so later after they

had started on, he heard another. The King carried a chime whistle. Both these signals were answered by a coarse steamboat whistle. Conlin left the car at Military and Water Streets and says he stood under an awning out of the rain, waiting to go to a barber shop; and while there heard the chime whistle sound an alarm. Returning to the shipyard that evening he heard of the collision and ob- [fol. 246] served the Dixon over on the Canadian shore at anchor. This was on Friday. On Monday, before being interviewed by any of the parties, Conlin was seen by the local steamboat inspector, who requested him to come to the office and make a statement at 2:00 o'clock, which he did. Proctors for the King say this testimony is discredited by the Sasse brothers' evidence that they carried Conlin up town much earlier than he gives it; that as they crossed a certain bridge the 5:00 o'clock whistles blew; that there was no storm or rain before Conlin left the car and that the rain really began just as they reached their respective homes, a considerable distance from where they left Conlin; and where each was greeted by his wife with the exclamation that he was home early, and that it was only 5:25. I was not much impressed by these two witnesses or their testimony. Conlin had every appearance of a responsible and truthful person. From his calling it would be quite likely that the steamer signals and alarms given in the storm would make a strong impression on his mind. Further, his story as to when the rain started was to some extent corroborated by Sturtevant, another employee of the shipyard.

Brewer claimed he heard the King blow a single blast signal, although he first omitted to say so. No one heard any two-blast signals from the King except one which she blew just before the collision. Dr. Francois testified to hearing one before the alarm, but I am inclined to think it the one shown by men on the Dixon to have been given after the alarm. The record of the hearing before the inspectors had Lemke, the Dixon lookout, saying he heard the King blowing two-blast signals. He challenged this, and other portions of the record show he is right and that the inspectors understood his answers to refer to one-blast whistles. This record is not accurate in all respects. It partially represents the deductions of the inspectors from

what witnesses said, rather than the language of the witnesses.

Libellant argues that to hold that the King blew one blast signals while navigating as though they were two-blasts, convicts her captain of sheer stupidity, citing The North Star, 62 Fed. at p. 80, where such evidence was not regarded as credible. In that case there was no corroboration from outside disinterested witnesses. The same argument applies to the Dixon. If she went to starboard on two-blast signals from the King and answered with one-blasts, then [fol. 247] her captain was either stupid or exceedingly careless. The undoubted fact is that one or the other of these masters was careless in respect of the signals he gave, and the weight of evidence and probabilities point to Capt. Watts as the one. Port to port passing is the usual thing at this point, and there are indications that the King intended to keep to the right. Her course was once or twice changed in that direction soon after passing Black River. The current tends across to Canada, to such extent that Bull. 42, p. 312, warns masters of the fact. The customary practice seems to have made it permissible to navigate well out in midstream. The storm was violent and visibility bad. I am not impressed by Capt. Watts' statement that he purposely went to the Canadian side in order to bring his ship about and anchor on the American side. The storm hardly warranted that. He was inattentive, as proven by his failure to hear all the Dixon's signals save the first fog whistle, and it is quite likely that he got across the line and in the regular path of upbound traffic before he realized it. I give no weight to the marking of the up and down bound channels on the charts, for Rule 24 gave the King the right of way, and she could elect either side, though it stands to reason she would not take the unusual course without some cause. It is clear enough that careless navigation of the King was a direct cause of the collision. When he found himself on the Canadian side, if not before, Capt. Watts should have observed Rules 15 and 26 (33 U. S. C. 272 and 291) by sounding an alarm, reducing speed, and navigating with caution. The New York, 175 U. S. 187; The Perseus, 272 Fed. 633 (C. C. A. 6) The Martin Mullen, 200 Fed. 916 (C. C. A. 6); Pittsburgh S. S. Co. v. Duluth S. S. Co., 222 Fed. 834 (C. C. A. 6).

The more difficult questions concern the alleged faults of

the Dixon; and of those claimed only excessive speed, crossing the bow of the King from a position of safety in the face of two-blast and alarm signals, and failure to stop or reverse, or use any means to avoid collision, are important on the evidence.

The proof does not show that excessive speed of the Dixon contributed to the accident. If we discard the testimony of her captain and crew that the vessel was checked to slow speed half a mile below the lagoon and accept that of Dr. Francois, who says that as she passed the lagoon she was going at full speed, still I have no doubt and will find [fol. 248] that the vessel later checked in time to reduce her speed to a very moderate one. She was going against the current, the mean average speed of which was about two miles an hour. Captain Goodberry testifies that at the time of the collision she was barely moving, and the wheelsman put her speed at about steerageway.

On this point I regard it very significant that none of the men from the King who witnessed the collision testified about the speed of the Dixon. They told of her position when she came into view and that she crossed the course of their vessel, but said not a word as to how fast she moved.

In this connection, much is made in the brief for the King of the state of the Dixon's logs. I can see no ground for believing that there has been any substitution, fraudulent entries, or false erasures. The explanation of the Dixon's witnesses satisfies me about that. One log shows the check to have occurred at 5:25 and the other at 5:30, but evidently this is a mere mistake without design. Mention is made of what is said to be a difference in the number of revolutions shown by Ex. 6 and the number testified to before the inspectors. The witness who made up Ex. 6 aptly asked what more he could do than turn his log over to the inspectors. It is also claimed that the Dixon's engineer testified before the inspectors that her engine was checked down immediately before the collision. His testimony is clear enough that what he intended to say was that the check occurred at the beginning of the storm. These matters can only bear on the Dixon's speed, and I am satisfied that just before the collision it was not excessive.

The vessels came together at about right angles, the bow of the King striking the Dixon 143 feet back from the stem on her port side. A minor claim is that the Dixon had to

begin porting on the American side in order to get into this position; but there is no evidence whatever that she was on the American side at any time.

When the vessels came into each other's view they were, according to the more satisfactory evidence, 400 or 500 feet apart. The captain of the King testified that he thereupon blew another two-blast passing signal when the Dixon immediately ported her helm and headed across his bow, and that he then blew a danger signal. This is incorrect so far as concerns the beginning of the Dixon's change of course; it started much earlier and while the vessels were still hidden from each other in the murk.

The final question is whether the Dixon was at fault in changing her course and failing to sound an alarm before [fol. 249] she heard the alarm of the King and before that vessel came into view.

The testimony from the Dixon is that on hearing the fog signal of the King, her lookout reported a ship ahead, which the mate thought was a little on the starboard bow. When the King's first passing signal of one blast was received, the lookout reported it a trifle on the starboard bow, and Capt. Goodberry ordered the helm ported one half point. The lookout then heard the King's second passing signal and reported a ship one half point off the starboard bow, whereupon the captain ordered a further change of the helm of an additional point to port.

After the receipt of the third one-blast signal, Capt. Goodberry testifies he told his wheelsman to port again and keep her coming. He then heard the King's alarm, saw her flash on his port side and heard a two-blast signal and the King came into full view. Seeing no chance of making the starboard passing as requested, he blew one whistle and shouted "Hard aport."

I do not find the Dixon at fault for porting one half point after the first passing signal. Nor for refusing the King's offer of a starboard passing, blowing one blast, and continuing on her course to starboard. The porting one half point cannot be held to be negligence, and the other acts, if negligent, were done in extremis.

However it must be found that before these acts in extremis occurred and after the Dixon had ported one half point, because of the steamer ahead, the second passing signal of the King and the report of the lookout notified Capt.

Goodberry that the approaching steamer was still about half a point off to starboard, whereupon he ordered the Dixon ported another point; and that after the third exchange of one-blast signals but before the King's alarm and when it was apparent that the other vessel was close and still approaching the course of the Dixon, Capt. Goodberry gave his wheelsman an order to port again and keep her coming.

During all this time the Dixon was over on the Canadian side, as her captain well knew. He found the King also there instead of on the American side where she ought to have been under the passing agreement, and closer to the Canadian shore than the Dixon, in fact only about 400 feet off.

Under these circumstances, and when after the Dixon's first change of course to starboard, it was discovered that the King continued on in her direction, Capt. Goodberry [fol. 250] should have appreciated that the approaching vessel was being very badly navigated or was laboring under some serious misunderstanding and that there was risk of collision unless the Dixon took prompt steps to prevent it. He should then have sounded alarms and stopped her headway. See Rule 26. Had this been done the King undoubtedly would have slowed down sooner than she did and the collision would have been averted. There is no evidence that this would have endangered the Dixon through loss of ability to control her.

Instead the Dixon, having already ported one half point, again ported her helm another point after receiving the second passing signal; and after the third was received and before she definitely located the position and course of the King, ported still more and came across the King's bows. Counsel for the Dixon say it was her duty to keep to starboard under her passing agreement, with which she had the right to assume the King would comply. But when it became apparent that the King was not complying, the duty arose to meet the new situation by the exercise of such precautions as prudent navigation required. The Dixon changed her course without knowing where the King would be found, instead of adopting the simple precautions against collisions in thick weather, provided by the rules, and for this she must be found negligent. The North Star, 62 Fed. 71 (C. C. A. 6); The Roby, 111 Fed. 601; The Quogue, 47 F. (2d) 873.

The change of the Dixon's course prior to the King's coming into view might not have brought her across the path of the downbound vessel just where the collision occurred, but the probabilities are that the result would have been the same without the subsequent order "hard aport" given after the third passing signal. For following the order to port one point, the next was to port and keep her coming and, according to the wheelsman, to whom these orders were given, their combined effect was equivalent to a direction to "hard aport."

The Dixon and her owners may not escape responsibility under the rule requiring evidence of her fault to be clear and convincing, assuming such rule to apply. All evidence on that point against her comes from her master and crew, and the court has made no "over-scrupulous search for possible faults" with which to charge her. [fol. 251] Steffens v. U. S., 32 F. (2d) 206. The negligence here was of the character found in Lie v. San Francisco & Portland S. S. Co., 243 U. S. 291, and both vessels will be found at fault and the damages divided accordingly, costs to be borne equally by Interstate Steamship Company and Great Lakes Transit Corporation.

The parties have agreed to a reference for the assessment of damages, and J. M. Shallenberger, Esq., of Cleveland, will be appointed special master commissioner to determine and report to the court the amount of damages sustained, including damages of the owner of the Dixon as bailee of her cargo, and damages due to personal injuries suffered by John Milko, intervenor.

S. H. West, Judge.

March 28, 1934.

IN UNITED STATES DISTRICT COURT

PETITION OF GREAT LAKES TRANSIT CORPORATION FOR REARGUMENT, IN CASE NO. 3168—Filed April 21, 1934

To the Honorable Samuel H. West, United States District Judge for the Northern District of Ohio.

The petition of the Great Lakes Transit Corporation respectfully shows:

That the issues presented by the pleadings in the above-entitled causes came on for trial before the Honorable

Samuel H. West on the 15th day of February, 1934; that on the 28th day of March, 1934 a decision in writing was duly made; that the principal issues of fact presented by the pleadings were with respect to the signals blown by the [fol. 252] respective vessels and the speed at which they were moving before and at the time of the collision; that all said issues of fact were resolved in favor of petitioner but nevertheless petitioner's Steamer Dixon was held guilty of contributory fault for the collision which was the subject of the controversy, in that the Court held she should have stopped her headway and blown an alarm signal after receiving the second one-blast whistle signal of the Steamer King, to which signal the Dixon replied and in conformance to which said signal the Steamer Dixon put her helm to port; that petitioner is submitting herewith a memorandum wherein are set forth fully its reasons why a reargument should be granted; that the ends of justice would be served if petitioner be granted a reargument in which there can be a full presentation of the law applicable to the facts as found by this Honorable Court.

Wherefore, petitioner prays that an order be entered in this cause directing that reargument be had at such time as the Court may direct.

Great Lakes Transit Corporation, Brown, Ely & Richards, by Brown, Ely & Richards, Its Counsel, Office & P. O. Address, 1317 Chamber of Commerce Bldg., Buffalo, N. Y.

May 7th, 1934.

After a fairly careful consideration of the briefs I find nothing in that of respondent inducing me to change my conclusion. On the authorities cited in the opinion, including The Quogue, 47 F. (2d) 873, which was cited to show the general duty of careful navigation "independently of what the pilot rules may require," I do not see how the decision could have been otherwise than it was, and the petition for reargument is denied. Exceptions to respondent.

S. H. West, Judge.

[fol. 253] IN UNITED STATES DISTRICT COURT

ORDER DENYING PETITION FOR REARGUMENT

(Entered May 7, 1934 by S. H. West, Judge)

Case No. 3168

This day this cause came on to be heard on the petition of the respondent, Great Lakes Transit Corporation, for reargument, and was submitted to the Court; on consideration thereof the Court denied said petition, to which ruling of the Court the respondent, Great Lakes Transit Corporation, by its proctors, excepts.

IN UNITED STATES DISTRICT COURT

PETITION OF ATLANTIC MUTUAL INSURANCE COMPANY, INTERVENING FOR ITS INTEREST AS INSURER AND UNDERWRITER OF THE CARGO OF THE STEAMER "GEORGE D. DIXON," IN CASES NOS. 3168 AND 3170—Filed April 25, 1934

To the Honorable the Judges of the United States District Court for the Northern District of Ohio, Eastern Division:

The petition of Atlantic Mutual Insurance Company, a corporation, intervening in the above entitled consolidated cause for its interest, as insurer and underwriter of the cargo of the Steamer George D. Dixon, against the Steamer Willis L. King, her engines, etc., and against Interstate Steamship Company, respondent herein, and against all persons intervening for their interests in the above entitled cause, respectfully alleges and shows to the Court upon information and belief, as follows:

First. That at all the times herein stated your petitioner was, and still is, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and as such was, and is, duly authorized to engage in and [fol. 254] is lawfully engaged in the business of marine insurance.

Second. That on or about the 11th day of August, 1933, the Steamer George D. Dixon, being laden with a cargo of miscellaneous goods and merchandise belonging to divers owners, shippers and consignees, was engaged upon a voyage from Buffalo to Milwaukee and Chicago and other inter-

mediate ports upon the Great Lakes, and that while engaged upon said voyage said Steamer was struck by and collided with the Steamer Willis L. King in the St. Clair River upon said day, by reason of which collision said Steamer George D. Dixon was severely damaged, the further prosecution of her voyage was frustrated and much of the cargo laden thereon was damaged, wet and lost.

Third. That said cargo was shipped on board said vessel pursuant to contract between the owners, shippers and consignees of said cargo and Great Lakes Transit Corporation for the carriage thereof, wherein and whereby said Great Lakes Transit Corporation agreed to provide insurance upon said cargo against the perils of the seas, and lakes, including collision.

Fourth. That heretofore and on or about the 23rd day of May, 1933, your petitioner by its policy of insurance duly issued, insuring Great Lakes Transit Corporation for the account of whom it may concern to the extent of thirty per cent of total insurance in the amount of $1,100,000.00 on cargo under and/or on deck on board the Steamer George D. Dixon on any voyage between ports upon the Great Lakes between April 15th, 1933, and December 12th, 1933, insured the owners, shippers and consignees of said cargo on board said Steamer George D. Dixon as aforesaid upon said cargo to the extent of thirty per cent of the value thereof against the perils of the seas and lakes, including collision, and against any and all claims which said cargo should be called upon to contribute in general average; that a copy of said policy, marked Schedule "A,"* is hereunto annexed and by reference made a part hereof.

That similar insurance, which, with that above referred to, amounted to $1,100,000.00 and insured the full and reasonable value of said cargo was carried with and provided by other insurers.

[fol. 255] Fifth. That on or about the 25th day of January, 1934, said Great Lakes Transit Corporation, as owner of the said Steamer George D. Dixon and as carrier and/or

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* Schedule A referred to herein has been transferred and attached to Stipulation dated June 13, 1934 and appears at page 268.

bailee of cargo lately laden thereon, filed its libel in this Court, against the Steamer Willis L. King, her engines, etc., and against Interstate Steamship Company, the owner and operator thereof, to recover the damages resulting to said Steamer George D. Dixon and to cargo laden thereon by reason of said collision; that in said libel it is alleged that said collision was due solely to the fault of the Steamer Willis L. King, those in charge of her, and of Interstate Steamship Company, in the following particulars:

1. In that her master and crew were careless and inattentive to their duties.

2. In that she maintained no proper lookout.

3. In that she failed to navigate at a moderate speed on encountering thick weather.

4. In that she failed to reduce her speed to bare steerageway, and failed to navigate with caution on hearing the Steamer Dixon.

5. In that she failed to direct her course to starboard, in accordance with passing signals exchanged between the King and the Dixon.

6. In that she came into waters rightfully belonging to the Steamer Dixon for her navigation.

7. In that she left the waters which she was bound to keep in as a downbound vessel, and came into the waters reserved for upbound vessels, in violation of regulation pertaining to said waters.

8. In that she violated Rules 15, 17, 23, 26, 27 and 28 of the Act of Congress known as the White Law.

9. In that she was navigated at and struck the Steamer Dixon while going at a negligent and unlawful rate of speed.

10. In that her navigation was entirely without caution, and in gross disregard of the rules of navigation and prudent seamanship and the rights of others, and it is therein prayed that said Great Lakes Transit Corporation recover the sum of $120,000.00 with interest against the said Steamer Willis L. King and Interstate Steamship Company, all of which more fully appears from said libel now on file in this Court to which your petitioner begs leave to refer.

[fol. 256] Sixth. That the amount of damage and loss by reason of the aforesaid collision to all of said cargo has not been definitely determined, but your petitioner is informed and believes that the same will amount to the sum of approximately $30,000.00; that such damage to part of said cargo amounts to the sum of $21,338.58, and that $6401.57, being thirty per cent thereof, has been paid by your petitioner to said Great Lakes Transit Corporation for account of the owners, shippers and consignees of said cargo, whereby your petitioner has become subrogated to the rights of said owners, shippers and consignees; that upon the determination of the amount of damage to the balance of said cargo your petitioner will likewise pay thirty per cent thereof and will likewise become subrogated to the rights of the owners, shippers and consignees of said cargo.

Seventh. That in addition to the payments aforesaid your petitioner has incurred and will incur other expenses and charges in respect to general average, the amount of which is not yet determined.

Eighth. That by reason of the premises your petitioner has become subrogated to and has succeeded to and acquired the rights of all the assured as hereinbefore mentioned against the Steamer Willis L. King and Interstate Steamship Company on account of the collision aforesaid.

Ninth. That the aforesaid collision between the said Steamers George D. Dixon and Willis L. King was caused by the fault and negligence of the Steamer Willis L. King and of those in charge of her, and of said Interstate Steamship Company in the respects alleged in the libel heretofore filed herein and referred to in Article Fifth of this petition.

Tenth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, your petitioner prays that it may be permitted to intervene herein and to prosecute for its own benefit the claims, demands and causes of action, of itself, of the owners, shippers and consignees of said cargo laden on board said Steamer George D. Dixon and of Great Lakes Transit Corporation, as bailee of said cargo, arising by reason of the damage to said cargo in the collision aforesaid, and that [fol. 257] claimant and respondent Interstate Steamship

Company, and libelant, Great Lakes Transit Corporation, may be required to answer this petition, and that this Court will be pleased to decree to your petitioner and against Interstate Steamship Company and the Steamer Willis L. King, her engines, etc., and her sureties, the sum of $6401.57 with interest thereon, and also such further sums as your petitioner will be required to pay as set forth in Articles Sixth and Seventh hereof, the amount of which is not yet determined, and all proper charges which may be assessed upon said cargo, with interest thereon and the costs of this action, and that said Steamer Willis L. King may be condemned and sold to pay the same, and that your petitioner may have such other and further relief in the premises as it may be entitled in law and in justice to receive.

Atlantic Mutual Insurance Company, by Ellis H. Gidley, One of its Proctors. Stanley & Gidley, Proctors for Petitioner, Office and P. O. Address, 627 Marine Trust Building, Buffalo, New York. Russell V. Bleecker, Terminal Bldg., Cleveland, O.

Duly sworn to by Ellis H. Gidley. Jurat omitted in printing.

[fol. 258] IN UNITED STATES DISTRICT COURT

STIPULATION WITH RESPECT TO AND FOR THE BENEFIT OF INSURANCE COMPANIES OTHER THAN ATLANTIC MUTUAL INSURANCE COMPANY, THAT THE INTERVENING PETITION OF ATLANTIC MUTUAL INSURANCE COMPANY WOULD STAND AS AND FOR THE INTERVENING PETITION OF EACH OF SAID INSURANCE COMPANIES, IN CASES NOS. 3168 AND 3170—Filed June 9, 1934

Whereas, Atlantic Mutual Insurance Company, representing itself as an insurer of the cargo lately laden on the Steamer George D. Dixon, to the extent of 30% of the total insurance issued thereon, has heretofore filed an intervening petition in the above entitled cause for account of its interest therein as in said libel it is more fully stated and

Whereas, for the underwriters named in this paragraph it is asserted that the remaining 70% of the total insurance covering the cargo lately laden on board the Steamer George D. Dixon, was issued by said various underwriters named [fol. 259] in this paragraph under the same policy condi-

tions as referred to in said intervening petition, in the following percentages of the total insurance effected:

Home Insurance Co.	10 per cent.
Union Marine & General Ins. Co. (U. S.)	10 per cent.
Sun Insurance Office (U. S.)	8 per cent.
Eagle Star & British Dominions (U. S.)	5 per cent.
Fireman's Fund Ins. Co.	4 per cent.
Great American Ins. Co.	3 per cent.
Lloyd's, London	11.435 per cent.
Edinburgh Assurance Co.	2.995 per cent.
British Traders Ins. Co.	2,995 per cent.
Royal Exchange Assurance	2,995 per cent.
Cornhill Ins. Co.	2.995 per cent.
Sun Insurance Office	2.995 per cent.
Economic Insurance Co.	1.795 per cent.
London Assurance	1.795 per cent.

and

Whereas, it is further asserted that said named underwriters have heretofore paid, or are about to pay, on account of loss, damage and injury sustained by the cargo of the steamer George D. Dixon, the following named sums, according to the respective percentages hereinbefore set forth:

Home Insurance Co.	$2,133.85
Union Marine & General Ins. Co. (U. S.)	2,133.86
Sun Insurance Office (U. S.)	1,707.60
Eagle Star & British Dominions (U. S.)	1,066.93
Fireman's Fund Ins. Co.	853.54
Great American Ins. Co.	640.16
Lloyd's, London	2,440.06
Edinburgh Assurance Co.	639.09
British Trader's Ins. Co.	639.09
Royal Exchange Assurance	639.09
Cornhill Ins. Co.	639.09
Sun Insurance Office	639.09
Economic Ins. Co.	383.03
London Assurance	383.03

and

Whereas, it is asserted that upon the determination of the amount of damage to the balance of said cargo, said

underwriters will likewise pay the same according to said percentages, and

[fol. 260] Whereas, it is asserted that said named underwriters, similar to said Atlantic Mutual Insurance Company, have incurred and will incur other expenses and charges in respect to general average, the amount being as yet undetermined, which said expense said underwriters will be required to pay in accordance with said percentages:

It Is Hereby Stipulated, by and between the proctors for the respective parties in the above entitled action, and proctors for said underwriters claiming to have insured 70% of the total insurance covering cargo laden on board the Steamer George D. Dixon, that the intervening petition of Atlantic Mutual Insurance Company heretofore filed herein shall stand for all purposes herein as and for the intervening petition of each of said named underwriters according to the respective percentages of insurance claimed to have been underwritten by each of them, as aforesaid; and it is hereby further

Stipulated, that the claim of each of said named underwriters for recovery herein is in form similar to the claim of said Atlantic Mutual Insurance Company as set up in its intervening petition, and arises out of the total amount of insurance referred to in the intervening petition of Atlantic Mutual Insurance Company to the extent of the respective percentages of said insurance underwritten by each of said named underwriters as the same shall be established; and it is hereby further

Stipulated, that any pleading interposed by any party hereto to the said petition of intervention of Atlantic Mutual Insurance Company shall stand and serve as a like pleading by each party as against the claim of intervention of each respective herein named underwriter similarly situated; and it is hereby further

Stipulated, that in the event of a recovery being decreed herein in favor of Atlantic Mutual Insurance Company, intervening petitioner, by reason of the matters and things set forth in its intervening petition filed herein, said decree if and as the proof warrants, shall also further direct similar recovery in like form to each of said named underwriters in the respective sums according to the percentages of the total amount of such insurance underwritten by each of

said hereinbefore named underwriters, the amount of insurance underwritten by each of said named underwriters and also the amount of recovery, if any, as to each of said named underwriters to be established by proof; and it is further

[fol. 261] Stipulated, that nothing herein shall be considered as an agreement as to liability for damages or as to the extent of any damage sustained by cargo or as to the interest of any underwriter therein, or as to the character and terms of the contract of carriage of said cargo or any part thereof, or as to the character and terms of any contract relating to the insurance of said cargo; but all these matters shall be subject to proof in usual and regular manner if and when they may become material, and nothing in this stipulation shall be deemed as waiving any right of any of the parties to this action, the sole purpose hereof being to avoid multiplicity of pleadings.

Answers shall be filed to the intervening petition of Atlantic Mutual Insurance Company by the other parties to this cause within 20 days of the date of this stipulation; and it is stipulated that the intervening petitioner, Atlantic Mutual Insurance Company, need not file bond for costs.

Dated, Cleveland, Ohio, May 27th, 1934.

T. H. Garry, F. L. Leckie, Proctors for Interstate Steamship Company and Str. Willis L. King. Brown, Ely & Richard, Proctors for Great Lakes Transit Corp. and Str. George D. Dixon. Sanders, Hamilton, Dudley & Connelly, Proctors for Intervening Libelant, John Milko. Stanley & Gidley, Proctors for Intervening Libelant, Atlantic Mutual Insurance Company. Stanley & Gidley, Proctors for Home Insurance Co., and other herein named underwriters similarly situated.

[fol. 262] IN UNITED STATES DISTRICT COURT

STIPULATION AS TO CERTAIN FACTS—Filed June 15, 1934

Cases Nos. 3168 and 3170

It is hereby stipulated by and between the proctors for the respective parties in the above consolidated cause and

proctors for the intervening libelant, Atlantic Mutual Insurance Company, and for the respective similarly situated underwriters claiming to have insured the cargo lately laden on board the Steamer George D. Dixon:

1. That the photostatic copy of policy rider form and conditions, a part of Schedule "A,"* attached to and made by reference a part of the intervening petition heretofore filed herein by Atlantic Mutual Insurance Company, is a true copy of the policy rider form and conditions issued by each of the several similarly situated underwriters named in a certain stipulation made by and between the parties hereto, dated May 27, 1934, excepting only as to the amounts and percentages of insurance respectively underwritten by each such similarly situated underwriter and the amount of premium payable therefore. That the total amount of insurance so issued was the sum of $1,100,000.00, of which the intervening petitioner Atlantic Mutual Insurance Company insured thirty per cent., and the respective similarly situated underwriters named in said stipulation insured seventy per cent., according to the percentages in said stipulation set forth.

2. That annexed hereto is a true copy of the Uniform Bill of Lading (marked Schedule "B"), approved by the Interstate Commerce Commission, and issued by Great Lakes Transit Corporation for the carriage and transportation of water-borne shipments and that a similar form of Bill of Lading was issued by Great Lakes Transit Corporation and accepted by the several cargo owners covering each shipment or consignment of cargo laden on board the [fol. 263] Steamer George D. Dixon at the time of the collision with the Steamer Willis L. King.

3. That annexed hereto, marked Schedule "C-1" and made a part hereof is a true copy of the Title Page of Local, Class and Commodity Tariff G. F. D. #118, S. B. #111, together with Rule 15 of Rules governing tariff, and annexed hereto and made a part hereof, marked Schedule "C-2" is a true copy of Rule 15 of Rules governing tariff as contained in Local, Joint and Proportional Freight Tariff I. C. C.

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* Note.—This Schedule was attached to and formed part of the Intervening Petition of Atlantic Mutual Insurance Company above referred to. (See page 254, supra.)

#83, both having been issued by the Great Lakes Transit Corporation as a common carrier by water, duly filed with the Interstate Commerce Commission and in full force and effect when the Steamer George D. Dixon was laden with cargo and began her voyage on August 9, 1933. That annexed hereto and made a part hereof are copies of Rules governing tariff as contained in the respective additional tariffs listed below, all of such tariffs having been issued by carriers other than Great Lakes Transit Corporation but containing joint or through rates applicable to shipments while in the possession of Great Lakes Transit Corporation as carrier, and such tariffs also having been duly filed with and approved by Interstate Commerce Commission and concurred in by Great Lakes Transit Corporation as such common carrier by water, and in full force and effect at the time cargo was loaded on board the said Steamer George D. Dixon, as aforesaid, such tariffs and tariff provisions being identified as follows:

Jones Tariff #508, I. C. C. #2470 (Schedule "C-3" attached hereto)

Seaboard Great Lakes I. C. C. #6, S. B. #10 (Schedule "C-4" attached hereto)

Jones Tariff #491, I. C. C. #2462 (Schedule "C-5" attached hereto)

Ransom Tariff #27, I. C. C. #82 (Schedule "C-6" attached hereto)

Curlette's Tariff #76, I. C. C. #A-346 (Schedule "C-7" attached hereto)

Jones Tariff #509-A, I. C. C. #2550 (Schedule "C-8" attached hereto)

Van Ummersen's Tariff #20-A, I. C. C. #200 (Schedule "C-9" attached hereto)

[fol. 264] Curlette's Tariff #42, I. C. C. #A-172 (Schedule "C-10" attached hereto)

Van Ummersen's Tariff #2-B, I. C. C. #110 (Schedule "C-11" attached hereto)—

That the various and several consignments of cargo so laden on board the Steamer George D. Dixon on the voyage involved herein, were shipped under and pursuant to the provisions of one or the other of the tariffs above referred to, or tariffs containing a rule identical with one of the rules attached hereto marked Schedule "C 1-11" inclusive, and

under form of bill of lading as aforesaid, and that the various and several rules and provisions attached hereto as Schedules "C 1-11" inclusive are all of the tariff provisions pertinent to the issues raised upon the intervening petition of Atlantic Mutual Insurance Company herein.

4. That as result of the collision between the Dixon and the King involved in this suit, a large amount of cargo on board the Dixon was lost and damaged and the cargo and owners became chargeable and liable for general average and like expenses in large amount; that as nearly as can now be estimated the amount of such cargo loss and damage is approximately $30,000, but the said amount cannot as yet be definitely ascertained on account of the fact that all claims therefor have not as yet been received by Great Lakes Transit Corporation and delay necessarily results in the receipt by it of all of such claims since many of them are presented in the first instance by cargo owners to the originating carriers, being ultimately forwarded to Great Lakes Transit Corporation. However, a large number of such claims have heretofore been received by Great Lakes Transit Corporation, and attached hereto marked Schedule "D" and made a part hereof, is a copy of one of said claims to which were attached at time of presentation to Great Lakes Transit Corporation the documents referred to therein, including original bill of lading, freight bill and in addition original or certified copies of invoices and other supporting documents which are omitted from the copy hereto attached to avoid repetition and inclusion of documents having no material bearing on the issues involved herein, it being hereby stipulated, however, that all claims of such cargo owners heretofore paid by Great Lakes Transit Corporation, as hereinafter stated, were in form having the same [fol. 265] legal force and effect as that attached hereto, marked Schedule "D," and were accompanied by all necessary supporting documents, and that all of such claims were treated, considered and when approved, were paid by Great Lakes Transit Corporation in the same manner without differentiation on account of any difference in the wording of the provisions of the several forms of tariff as set forth in the said Schedules "C 1-11" annexed hereto. A number of such claims were approved and paid by said Great Lakes Transit Corporation on various dates subsequent to the said collision and prior to January 22, 1934, the total amount

paid by Great Lakes Transit Corporation to such date on account thereof being $21,987.57, and all of such payments were made by checks delivered to and collected by such claimants of loss or damage to cargo in form similar to the specimen form attached hereto, made a part hereof and marked Schedule "E," the date of payment, number of claim, name of claimant, amount of payment and authorized signatures on behalf of the Great Lakes Transit Corporation having been duly inserted in the respective checks prior to delivery. That on or about January 22, 1934, Marsh & McLennan, Average Adjusters, prepared a partial statement of loss on cargo and adjustment of such claims approved and paid by Great Lakes Transit Corporation as aforesaid, to the said date, the names of said claimants and the amounts paid them respectively, being as set forth in copy of said adjustment attached hereto, made a part hereof and marked Schedule "F," and on behalf of Great Lakes Transit Corporation presented claim to the Atlantic Mutual Insurance Company and other similar underwriters, for reimbursement of the said amount, plus the expenses of Marsh & McLennan in connection with the case and for the said adjustment and copies, in the amount of $360.00, totaling $22,338.57, less the sum or $1,000.00 deductible average provided in said policies, such claim against underwriters being in the net amount of $21,338.57, and the amount of said deductible average being borne by Great Lakes Transit Corporation. That in and by said adjustment the said average adjusters apportioned the said sum of $21,338.57 among the various underwriters who had issued the policies of insurance hereinabove referred to; that said apportionment is set forth on the page of said adjustment headed "Apportionment of Loss among Underwriters"; that the underwriters listed under the heading "American Insur-
[fol. 266] ance" made payment by check directly to the Great Lakes Transit Corporation as follows:

		Date paid
Atlantic Mutual	$6,401.57	1/27/34
Home Insurance Co.	2,133.86	1/30/34
Union Marine & General	2,133.86	1/29/34
Sun Insurance Co.	1,707.09	1/29/34
Eagle Star & British Dom'ions	1,066.93	2/ 3/34
Fireman's Fund	853.54	1/29/34
Great American	640.16	1/29/34
	$14,937.00	

That the English underwriters made payment of their proportion thereof on the 21st day of April 1934; that this payment was made by the English correspondent of Marsh & McLennan, collecting from the English underwriters the amount payable by them, whereupon said English correspondent credited Marsh & McLennan with the amount of such claim and the latter made payment in dollars to the Great Lakes Transit Corporation of the amount thus credited. That when further claims not approved and paid on the date of said adjustment, to-wit: January 22, 1934, are received, approved and paid by the Great Lakes Transit Corporation, a further statement or statements will be made and payment will be made in like manner by the underwriters, and that finally when all data is at hand, a General Average statement will be prepared by said adjusters, and when this statement is approved by underwriters they will make payment to the Great Lakes Transit Corporation of cargo's proper proportion of General Average and like expenses in the same manner as they made payment under the adjustment of January 22, 1934.

5. That the corporate entity and the capacity to sue herein of intervening petitioner, Atlantic Mutual Insurance Company, as well of the respective similarly situated underwriters named in said stipulation, dated May 27, 1934, as having issued an aggregate of seventy per cent., of the total insurance claimed to cover the cargo lately laden on board the Steamer George D. Dixon, is expressly admitted herein for the purposes of this action.

6. That the premium provided in each of the policy rider forms referred to in paragraph "1" hereinabove, upon the policies of insurance above mentioned, was paid to underwriters by Great Lakes Transit Corporation.

[fol. 267] 7. That policies in substantially the same form as the said policy rider form made a part of Schedule "A" atttached hereto, were severally issued by Atlantic Mutual Insurance Company, and other underwriters, to Great Lakes Transit Corporation and were, in effect, for each year from 1928 to 1933 inclusive, and during all of said period general cargoes were carried and transported by vessels of the Great Lakes Transit Corporation named in the said policy rider form, pursuant to bill of lading in the

same form as that attached hereto marked Schedule "B," the respective consignments being carried under and pursuant to the several tariff provisions in Schedule "C 1-11" inclusive, annexed hereto, or provisions having the same legal force and effect. During said period numerous cases of loss and damage to such cargo have arisen as the result of perils of the sea, while carried in said vessels, and in each case the procedure adopted and carried out with respect to presentation of claims of cargo owners or shippers to Great Lakes Transit Corporation, examination, approval and payment of such claims by Great Lakes Transit Corporation, presentation of claim for reimbursement on its behalf to said Atlantic Mutual Insurance Company and other underwriters issuing similar forms of policy, and reimbursement thereof, less deductible average, by Atlantic Mutual Insurance Company and such other underwriters, to Great Lakes Transit Corporation, has been the same as the procedure set forth above with respect to the said loss and damage of the cargo of the Dixon on the voyage involved herein.

8. This stipulation is entered into for the purpose of permitting the Court to pass upon the legal rights of the Atlantic Mutual Insurance Company and other underwriters intervening herein, insofar as concerns the form of interlocutory decree to be entered, and shall be without prejudice to the right of any party to introduce or offer further evidence if such evidence be deemed to be material to any question or issue that may arise in connection with the intervening petitions of underwriters with respect to cargo, prior to the entry of final decree herein. The documents set forth in the Schedules attached hereto are stipulated to be true copies of the originals, and shall be considered as duly proven and offered in evidence, and each of the parties reserves the right to object to the materiality or relevancy

[fol. 268] of the said documents, or any of them, or of any of the other facts hereby stipulated.

Dated: June 13, 1934.

Duncan, Leckie, McCreary, Schlitz & Hinslea, Proctors for Interstate Steamship Company, and Steamer Willis L. King. Brown, Ely & Richards, Proctors for Great Lakes Transit Corporation, and Steamer George D. Dixon. Sanders, Hamilton, Dudley & Connelly, Proctors for Intervening Libelant, John Milko. Stanley & Gidley, Proctors for Intervening Libelant, Atlantic Mutual Insurance Company. Stanley & Gidley, Proctors for Home Insurance Company, and other herein named underwriters similarly situated.

SCHEDULE "A" *

[Special Cargo]

Atlantic Mutual Insurance Company

Chartered 1842

Atlantic Building 49-51 Wall Street, New York

[No. CP 97189]

Cash Participating Policy

As Per Form Attached

By this Special Policy of Insurance Great Lakes Transit Corporation for account of whom it may concern in case of loss to be paid in funds current in the United States, or in the City of New York to Great Lakes Transit Corporation, or order, Do make insurance and cause to be insured, lost or not lost, at and from April 15th, 1933, to December 12th, 1933, as per form attached. On First Interest, as per form attached.

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* This Schedule was attached to the Petition of Atlantic Mutual Insurance Company, page 254, supra.

[fol. 269] Sum Insured—$330,000—(Three hundred thirty thousand Dollars).

upon all kinds of lawful goods and merchandises, laden or to be laden on board the good ——, call the Vessels as per form attached, whereof is master for this present voyage, or whoever else shall go for master in the said vessel, or by whatever other name or names the said vessel, or the master thereof, is or shall be named or called.

Beginning the adventure upon the said goods and merchandises, from and immediately following the loading thereof on board of the said vessel, at —— as aforesaid, and so shall continue and endure until the said goods and merchandises shall be safely landed at —— as aforesaid, and it shall and may be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather or other unavoidable accident, without prejudice to this insurance. The said goods and merchandises, hereby insured, are valued (premium included) as per form attached.

Touching the adventures and perils which the said Atlantic Mutual Insurance Company is contented to bear, and takes upon itself in this voyage, they are of the seas, men-of-war, fires, enemies, pirates, rovers, thieves, jettisons, letters of mart and counterpart, reprisals, takings at sea, arrests, restrains, and detainments of all kings, princes or people, of what nation, condition or quality soever, barratry of the master and mariners, and all other perils, losses and misfortunes that have or shall come to the hurt, detriment or damage of the said goods and merchandise, or any part thereof. And in case of any loss or misfortune, it shall be lawful and necessary to and for the assured, —— factors, servants and assigns, to sue, labor, and travel for, in and about the defense, safeguard and recovery of the said goods and merchandises, or any part thereof, without prejudice to this insurance; nor shall the acts of the insured or insurers, in recovering, saving and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of an abandonment; to the charges whereof, the said Insurance Company will contribute according to the rate and quantity of the sum herein insured, having been paid the consideration for this insurance, by the assured or —— assigns, at and after the rate of 2.27%.

[fol. 270] Premium—$7,491.00.

And in case of loss, such loss to be paid in thirty days after proof of loss, and proof of interest in the said —— (premium if unpaid, being first deducted), but no partial loss or particular average shall in any case be paid, unless amounting to five per cent.

Warranted not to abandon in case of capture, seizure, or detention, until after condemnation of the property insured; nor until ninety days after notice of said condemnation is given to this Company. Also warranted not to abandon in case of blockade, and free from any expense in consequence of capture, seizure, detention or blockade, but in the event of blockade, to be at liberty to proceed to an open port and there end the voyage.

If the voyage aforesaid shall have been begun and shall have terminated before the date of this policy, then there shall be no return of premium on account of such termination of the voyage.

The within insurance is subject to the conditions and against the perils and risks as above and as shown on the pages following which are made a part of this policy.

In Witness Whereof, the President of the said Atlantic Mutual Insurance Company hath hereunto subscribed his name, and caused the same to be attested by its Secretary, in New York, the 23rd day of May, one thousand nine hundred and thirty three but this policy shall not be valid unless countersigned by the duly authorized representative of the Company at New York, N. Y.

Countersigned at New York this 24th day of May, 1933.

—— ——, Manager.

Examined SHB.

Copy. Broker's Copy.

Copy

Provided Always, and it is hereby further agreed, That if the said Assured shall have made any other assurance upon the premises aforesaid, prior in day of date to this policy, then the said Atlantic Mutual Insurance Company shall be answerable only for so much as the amount of such prior assurance may be deficient towards fully covering the premises hereby assured; and the said Atlantic

Mutual Insurance Company shall return the premium upon so much of the sum by them assured, as they shall be by [fol. 271] such prior assurance exonerated from. And in case of any insurance upon the said premises, subsequent in day of date to this policy, the said Atlantic Mutual Insurance Company shall nevertheless be answerable for the full extent of the sum by them subscribed hereto, without right to claim contribution from such subsequent Assurers, and shall accordingly be entitled to retain the premium by them received, in the same manner as if no such subsequent assurance had been made. Other insurance upon the premises aforesaid, of date the same day as this policy, shall be deemed simultaneous herewith; and the said Atlantic Mutual Insurance Company shall not be liable for more than a ratable contribution in the proportion of the sum by them insured to the aggregate of such simultaneous insurance. It is also agreed, that the property be warranted by the assured free from any charge, damage or loss, which may arise in consequence of a seizure or detention, for or on account of any illicit or prohibited trade, or any trade in articles contraband of war.

Memorandum.—It is also agreed, that bar, bundle, rod, hoop and sheet iron, wire of all kinds, tin plates, steel, madder, sumac, wicker-ware and willow (manufactured or otherwise), salt, grain of all kinds, tobacco, indian meal, fruits (whether preserved or otherwise), cheese, dry fish, hay, vegetables and roots, rags, hempen yarns, bags, cotton bagging, and other articles used for bags or bagging, pleasure carriages, household furniture, skins and hides, musical instruments, looking-glasses, and all other articles that are perishable in their own nature, are warranted by the assured free from average, unless general; hemp, tobacco stems, matting and cassia, except in boxes, free from average under twenty per cent. unless general; and sugar, flax, flax-seed and bread, are warranted by the assured free from average under seven per cent, unless general; and coffee in bags or bulk, pepper in bags or bulk, and rice, free from average under ten per cent., unless general.

Warranted by the insured free from damage or injury from dampness, change of flavor, or being spotted, discolored, musty or mouldy, except caused by actual contact of sea water with the articles damaged, occasioned by sea perils. In case of partial loss by sea damage to dry goods,

cutlery or other hardware, the loss shall be ascertained by a separation and sale of the portion only of the contents of the packages so damaged, and not otherwise and the same practise shall obtain as to all other merchandise as far as [fol. 272] practicable. Not liable for leakage on molasses or other liquids unless occasioned by stranding or collision with another vessel.

Including (subject to the terms of the policy), all risks covered by this policy from shippers' or manufacturers' warehouse until on board the vessel, during transshipment if any, and from the vessel whilst on quays, wharves, or in sheds during the ordinary course of transit until safely deposited in consignees' or other warehouse at destination named in policy, except that in respect to shipments to the River Plate, the risks under this insurance shall cease upon arrival at any shed (transit or otherwise), store, custom house or warehouse, or upon the expiry of ten (10) days subsequent to landing, whichever may first occur.

Including transit by craft, raft, and/or lighter to and from the vessel. Each craft, raft, and/or lighter to be deemed a separate insurance. The assured are not to be prejudiced by any agreement exempting lightermen from liability.

It is especially agreed, that when by its terms, this Policy includes the risk on railroad, dock, wharf, quay or elsewhere on shore as herein specified, this Company is liable for loss or damage caused by fire, collision, derailment, cyclones, hurricanes, flood (meaning the rising of navigable waters) or by accident to the conveyance or by collapse or subsidence of docks.

Held covered, at a premium to be arranged, in case of deviation or change of voyage, or other variation of the risk by reason of the exercise of any liberty granted to the ship-owner or charterer under the contract of affreightment, or of any omission or error in the description of the interest, vessel or voyage.

Held covered in the event of the goods (or any part thereof) hereby insured, being shut out and/or transferred to another vessel or vessels, provided written notice be given to the Company in all such cases as soon as known to the assured, and additional premium be paid if and as required.

In the event of the goods or any part thereof, being discharged short or carried beyond the port of destination,

the assurers hereby agree to hold the assured covered until final arrival and delivery of the goods at their proper port of destination and delivery, provided written notice be given the Company in all such cases as soon as known to the assured, and additional premium be paid if and as required.

[fol. 273] Warranted by the assured free from liability for any loss of or damage to goods in the possession of any carrier by land and/or water or in the possession of any other bailee who may be liable for such loss or damage by law, or under an insured bill of lading, or under a rate of freight that includes insurance; and free from any liability for goods shipped under a bill of lading containing a stipulation that the carrier may have the benefit of any insurance on such goods.

It is also warranted that any fire insurance granted herein shall be null and void to the extent of any fire insurance which the assured or any carrier, or other bailee has, at the time of the fire, and which would attach if this policy had not been issued.

It is, however, understood and agreed that this Company will assume liability for its proportion of any loss for which it would be liable in the absence of the two foregoing clauses, to the extent of the amount which would not be recoverable from third parties if this insurance did not exist; and for its proportion of expenses incidental to such loss.

The Assured are not to be prejudiced by the presence of the negligence clause and/or latent defect clause in the Bills of Lading and/or Charter Party. The seaworthiness of the vessel as between the Assured and the Assurers is hereby admitted and the wrongful act or misconduct of the shipowner or his servants causing a loss is not to defeat the recovery by an innocent Assured if the loss in the absence of such wrongful act or misconduct would have been a loss recoverable on the policy.

Warranted free of claim for loss of market or for damage or deterioration arising from delay, whether such delay be caused by an insured peril or otherwise.

Returned and used goods are insured free of particular average unless caused by stranding, sinking, burning, or collision with another vessel, and free of claim for theft, pilferage or non-delivery, unless otherwise agreed prior to shipment.

Unless otherwise specially provided for herein, this policy excludes the risks of theft, pilferage and/or non-delivery.

Unless otherwise specially provided for herein, this policy is free of claim for loss by breakage unless caused by standing or collision with another vessel.

[fol. 274] In case of damage affecting labels, capsules or wrappers, this Company, if liable therefor under the terms of this Policy, shall be liable only for an amount sufficient to pay the cost of new labels, capsules or wrappers and the cost of reconditioning the goods.

In case of claims for damage on Dry Goods or Hardware, exceeding fifteen per cent, the Company to have the privilege of settling upon the principle of a salvage loss, paying to the assured the sum insured, with the freight and the duties.

In case of claim on machinery under this policy, the adjustment to be made on the part lost or damaged, and the liability of the Company is not to exceed the insured value of such part, plus cost of forwarding the replacing part to destination.

General Average and Salvage charges payable according to Foreign Statement or per York-Antwerp Rules if in accordance with the contract of affreightment.

The risks covered by this policy are to include loss, damage or expense resulting from explosion, unless caused by perils excepted by clause No. 12.

No. 12

Warranted by the Assured free from claim on account of capture, seizure, detention or destruction, by or arising from hostile forces, riots, civil commotions, civil war, revolt, revolution or other armed opposition to Government, or by the acts of officers or other persons acting in the name of belligerents, or in pursuing warlike operations, whether before or after declaration of war, and any and all consequences thereof, whether specifically insured under other clauses of this policy or not.

Warranted by the Assured free from claim on account of loss or damage caused by strikers, locked-out workmen, labor riots or persons taking part in labor disturbances, and any and all consequences thereof, whether specifically insured under other clauses of this policy or not.

Warranted free of any claim based upon loss of or frustration of the insured voyage, or adventure, caused by arrests, restraints, or detainments of kings, princes, or peoples.

Proof of loss to be authenticated by the Agent of the Company, if there be one at the place such proofs are taken. [fol. 275] The Premium under this Policy is charged on a Cash Participating Basis, and in consideration thereof, any share in the profits of the Company declared as applicable to this Policy will be credited to the assured in cash.

—— ——, Manager.

Copy

First Interest

Great Lakes Transit Corporation

In consideration of Seven Thousand Four Hundred Ninety-one and 00/100 Dollars do insure, lost or not lost, Great Lakes Transit Corporation, for account of whom it may concern.

Loss, if any, payable to Great Lakes Transit Corporation, or order, to the amount of $330,000, being 30% of a total similar insurance of $1,100,000.

At and from April 15, 1933, to midnight (Chicago time), December 12, 1933, but it is agreed to hold covered beyond that date any cargo per vessels sailing from initial port prior to December 12, 1933, Midnight (Chicago time), until Great Lakes Transit Corporation's responsibility therefor ceases.

On cargo of any kind owned by the Assured and on the assured's liability to others in respect to cargo of any kind covering same from time said Great Lakes Transit Corporation becomes responsible therefor and until its responsibility ceases, wheresoever the same may be, including risks while on docks, in and/or on cars on docks, piers, wharves, lighters and/or craft, transfers, and all land conveyances, and also to cover upon any advances made by and payment of back charges made by or due from said Assured, and upon any charges of said Assured upon any and all cargo or any portion thereof; from the time the Assured becomes responsible for such cargo including risks of transshipment, and under and/or on deck on board of the Assured's steamers:

[fol. 276] Alfred H. Smith
C. T. Jaffray
Charles Donnelly
Daniel Willard
H. A. Scandrett
J. E. Gorman
J. M. Davis
Juniata

Delos W. Cooke	Milwaukee
Duluth	Octorara
Edward Chambers	P. E. Crowley
Edward E. Loomis	Tionesta
F. D. Underwood	Utica
Fred W. Sargent	W. J. Conners
George D. Dixon	W. W. Atterbury

and/or any other steamers owned, constructed, purchased, leased, or chartered by the Assured, on any voyage or voyages direct or otherwise, from port or ports on the Great Lakes to port or ports on the Great Lakes and on the rivers, channels and bays of the Great Lakes and/or intermediate points in either direction, and on board such steamers while at said places or ports. Also to cover through to destination goods delivered by the Assured to other water transportation companies for shipment to destination. In the event any cargo remains short shipped at the close of navigation, due to a peril insured against, this insurance to pay the cost of forwarding by all rail route, if required.

It is agreed that the term "cargo" as used in this Policy includes goods, wares, merchandise, live stock, express matter and checked baggage of every description, and where used in this form it includes also duties and all advances made by and payment of back charges made by or due from said Assured and/or charges of said Assured upon any and all cargo or any portion thereof.

It is agreed between the parties hereto that said steamers are to be employed in carrying cargo, or cargo and passengers, in and on said steamers as aforesaid, the Assured taking upon themselves as to said cargo, or parts thereof, all the risks, perils and liabilities which by law a common carrier by land or water assumes, and also the insurance of said cargo against perils of the seas and lakes, fire, jettisons, barratry, negligence of master or mariners, loss or damage arising through explosions howsoever or wheresoever occurring, bursting of boilers, breakage of shafts or through any latent defect in the machinery or hull, and all other acts, perils or misfortunes that have or shall come to the hurt, detriment, damage to or loss of the said cargo or any part thereof, and the said Assurers agree and under- [fol. 277] take to indemnify and hold harmless the said As-

sured against hurt, detriment, damage to or loss of such cargo from any and all such risks, perils, acts or misfortunes, to the extent which the Assured may be held by the owners thereof, under any liability the Assured shall have assumed as common carriers, insurers, or otherwise, and for any and all claims which said cargo may be called upon to contribute in General Average, and/or for salvage, landing, warehousing and/or special charges, and to cover in like manner duties and any cargo owned by the Assured, and also all advances made by and payment of back charges made by or due from said Assured and/or charges of said Assured upon any and all cargo or any portion thereof.

Notwithstanding anything herein to the contrary underwriters are not to be liable for any claim with respect to cargo carried on spar deck caused by wet, leakage or exposure but this shall not be construed to exclude General Average or Salvage Charges or claims arising from jettison or washing overboard.

It is understood and agreed that shipments in refrigerators are also covered against damage to or deterioration of goods if occasioned by the break down or derangement of refrigerating machinery and/or insulation and/or piping and/or if the vessel be delayed or deviates in consequence of break down or derangement of machinery, rudder or sternpost.

It is agreed that said steamers shall, while having such cargo on board, have the privilege of sailing, with or without pilots, of towing and being towed and assisting vessels and/or craft in all situations and to any extent and to render salvage services, of laying up, being docked, undocked and of changing docks, moving in harbour, going on graving docks, dry docks, ways, slipways, railways, gridirons, pontoons, and of adjusting compasses, etc., howsoever, whensoever or wheresoever as often as may be done and for mechanics and/or others to work on board at any time, without prejudice to this insurance.

Liability under this policy for any loss or losses, claim or claims arising in respect to each cargo while on board of each of the above named steamers and/or substituted steamers and/or additional steamers including connecting water conveyances or in respect to cargo while on docks, wharves or elsewhere on shore as the result of any one

occurrence, is hereby limited to 30% of the sum of $100,000. [fol. 278] Permission is granted for Excess Insurance which shall be liable only for any loss and/or losses, claim and/or claims beyond the sum of $100,000 on each cargo of each steamer including connecting water conveyances or on cargo while on docks, wharves or elsewhere on shore as the result of any one occurrence.

In case of any loss or misfortune, it shall be lawful to and for the Assured, their factors, servants and assigns, to sue, labor and travel for, in and about the defence, safeguard and recovery of the said cargo, or any part thereof, without prejudice to this insurance; nor shall the acts of the Assured or Assurers in recovering, saving and preserving the property insured, in case of disaster be considered a waiver or an acceptance of abandonment; to the charges whereof the said Assurers will pay as herein provided.

In case of loss, such loss to be paid thirty days after proof of loss and proof of interest are furnished to this company. There shall, however, be deducted from the aggregate of all claims on each east bound or west bound passage, the sum of $1,000.

It is especially understood and agreed that the protection given by this Policy remains in full force and effect during the whole period insured and is not reduced by the amount of any loss or losses collected hereunder.

Seaworthiness of vessels is admitted under this Policy as between the Assured and this Company.

Warranted by the Assured that shipments of iron ore and grain in bulk will not be carried at "Insured" rates of freight and that the Assured will not assume responsibility for marine perils in connection with such shipments.

This Policy shall not be vitiated by any unintentional error in description of voyage or interest, cargo, trade, locality, or by any deviation, provided the same be communicated to the Assurers within reasonable time after known to the Assured, and an additional premium paid if required.

To return net one-tenth of one per cent of the total premium charged on this Policy on each vessel respectively for each 15 consecutive days between April 25th and Novem-

ber 30th not engaged in operation and no risk incurred hereunder during such time with respect to such vessel or vessels; provided that in the case of the Steamers "Juniata," "Octorara" and "Tionesta" returns are to be allowed only during the period between June 5th and September 25th. No return to be allowed for the time any [fol. 279] vessel is not engaged in operation due to casualty.

The premium on this policy having been computed in part on an estimated total carriage of 450,000 tons of flour and/or other mill products during the currency of this insurance, it is hereby provided that upon expiration of this contract the Assured will report to these underwriters the total actual number of tons of flour and/or other mill products carried by them. If the total number of tons exceeds 450,000 these underwriters are to receive additional premium for each 1,000 tons of such excess at .06945% of the total premium on this policy and if the total number of tons is less than 450,000 these underwriters are to return premium on the same basis on the deficiency.

It is agreed that on the first day of each calendar month or as soon thereafter as may be practicable, the Assured shall report to Marsh & McLennan, Incorporated, for transmission to these Assurers, the total of cargo tonnage by classification of commodities moved during the previous month.

It is further agreed that the Assured shall report monthly to Marsh & McLennan, Incorporated, for transmission to these Assurers, the amount of grain held in their vessels for winter storage subsequent to December 12, 1933, and to pay premium thereon at the rate of 2½¢ per $100 of value per month. For the purpose of calculation of premium, market value of grain in winter storage as of the 15th day of each month is to be employed.

It is hereby understood and agreed that this insurance shall not be prejudiced in the event the Assured has or may release the lessors of property which the Great Lakes Transit Corporation leases in the operation of their business.

The terms and conditions of this form are to be regarded as substituted for those of the Policy to which it is attached, the latter being hereby waived.

Attached to Policy No. CP 97189 of the Atlantic Mutual Insurance Company.

Marsh & McLennan
Incorporated
80 Maiden Lane
New York City

[fol. 280] SCHEDULE "B"

1st Sheet

(Uniform Domestic Straight Bill of Lading, adopted by Carriers in Official, Southern and Western Classification territories, March 15, 1922, as amended August 1, 1930.)

Shipper's No. —.
Agent's No. —.

Uniform Straight Bill of Lading

Original—Not Negotiable

Great Lakes Transit Corporation

Received, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading,

At 193
From .....

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof,

which are hereby agreed to by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee—For purposes of notification only)

Consigned to .....

Destination ..... State of ..... County of .....

Route .....

Delivering Carrier ..... Car Initial ..... Car No. .....

No. Packages	Description of Articles, Special Marks, and Exceptions	*Weight (Subject to Correction)	Class or Rate	Check Column

[fol. 281]

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

.....
(Signature of consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

.....

Received $.....
to apply in prepayment of the charges on the property described hereon.

.....
(Agent or Cashier)

Per .....
(The signature here acknowledges only the amount prepaid.)

Charges advanced:

$.....

* If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

Note—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding ..... per .....

..... Shipper. ..... Agent.

Per ..... Per .....

Permanent post-office address of shipper .....

Contract Terms and Conditions

Sec. 1. (a) The carrier or party in possession of any of the property herein described shall be liable as at common

law for any loss thereof or damage thereto, except as hereinafter provided.

(b) No carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for natural shrinkage. The carrier's liability shall be that of warehouseman, only, for loss, damage, or delay caused by fire occurring after the expiration of the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided) after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination, or tender of delivery of the property to the party entitled to receive it, has been made. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner, or party entitled to make such request, or resulting from a defect or vice in the property, or for country damage to cotton, or from riots or strikes.

(c) In case of quarantine the property may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the carriers' dispatch at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when property is so discharged, or property may be returned by carrier at owner's expense to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to property shall be borne by the owners of the property or be a lien thereon. The carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done by quarantine regulations or authorities even though the same may have been done by carrier's officers, agents, or employees, nor for detention, loss, or damage of any kind occasioned by quarantine or the enforcement thereof. No carrier shall be liable,

[fol. 282] except in case of negligence, for any mistake or inaccuracy in any information furnished by the carrier, its agents, or officers, as to quarantine laws or regulations. The shipper shall hold the carriers harmless from any expense they may incur, or damages they may be required to pay, by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

Sec. 2. (a) No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said property by any carrier or route between the point of shipment and the point of destination. In all cases not prohibited by law, where a lower value than actual value has been represented in writing by the shipper or has been agreed upon in writing as the released value of the property as determined by the classification or tariffs upon which the rate is based, such lower value plus freight charges if paid shall be the maximum amount to be recovered, whether or not such loss or damage occurs from negligence.

(b) As a condition precedent to recovery, claims must be filed in writing with the receiving or delivering carrier, or carrier issuing this bill of lading, or carrier on whose line the loss, damage, injury or delay occurred, within nine months after delivery of the property (or, in case of export traffic, within nine months after delivery at port of export) or, in case of failure to make delivery, then within nine months after a reasonable time for delivery has elapsed; and suits shall be instituted against any carrier only within two years and one day from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice. Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, no carrier hereunder shall be liable, and such claims will not be paid.

(c) Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid

the policies or contracts of insurance: Provided, That the carrier reimburse the claimant for the premium paid thereon.

Sec. 3. Except where such service is required as the result of carrier's negligence, all property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton or cotton linters is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership (and prompt notice thereof shall be given to the consignor), and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 4. (a) Property not removed by the party entitled to receive it within the free time allowed by tariffs, lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination has been made, may be kept in vessel, car, depot, warehouse or place of delivery of the carrier, subject to the tariff charge for storage and to carrier's responsibility as warehouseman, only, or at the option of the carrier, may be removed to and stored in a public or licensed warehouse at the place of delivery or other available place, at the cost of the owner, and there held without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

(b) Where nonperishable property which has been transported to destination hereunder is refused by consignee or the party entitled to receive it, or said consignee or party entitled to receive it fails to receive it within 15 days after notice of arrival shall have been duly sent or given, the carrier may sell the same at public auction to the highest bidder, at such place as may be designated by

the carrier: Provided, That the carrier shall have first mailed, sent, or given to the consignor notice that the property has been refused or remains unclaimed, as the case may be, and that it will be subject to sale under the terms of the bill of lading if disposition be not arranged for, and shall have published notice containing a description of the prop- [fol. 283] erty, the name of the party to whom consigned, or, if shipped order notify, the name of the party to be notified, and the time and place of sale, once a week for two successive weeks, in a newspaper of general circulation at the place of sale or nearest place where such newspaper is published: Provided, That 30 days shall have elapsed before publication of notice of sale after said notice that the property was refused or remains unclaimed was mailed, sent, or given.

(c) Where perishable property which has been transported hereunder to destination is refused by consignee or party entitled to receive it, or said consignee or party entitled to receive it shall fail to receive it promptly, the carrier may, in its discretion, to prevent deterioration or further deterioration, sell the same to the best advantage at private or public sale: Provided, That if time serves for notification to the consignor or owner of the refusal of the property or the failure to receive it and request for disposition of the property, such notification shall be given, in such manner as the exercise of due diligence requires, before the property is sold.

(d) Where the procedure provided for in the two paragraphs last preceding is not possible, it is agreed that nothing contained in said paragraphs shall be construed to abridge the right of the carrier at its option to sell the property under such circumstances and in such manner as may be authorized by law.

(e) The proceeds of any sale made under this section shall be applied by the carrier to the payment of freight, demurrage, storage, and any other lawful charges and the expense of notice, advertisement, sale, and other necessary expense and of caring for and maintaining the property, if proper care of the same requires special expense, and should there be a balance it shall be paid to the owner of the property sold hereunder.

(f) Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed freight agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and, except in case of carrier's negligence, when received from or delivered to such stations, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from locomotive or train or until loaded into and after unloaded from vessels.

Sec. 5. No carrier hereunder will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classifications or tariffs unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

Sec. 6. Every party, whether principal or agent, shipping explosives or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for and indemnify the carrier against all loss or damage caused by such goods, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 7. The owner or consignee shall pay the freight and average, if any, and all other lawful charges accruing on said property; but, except in those instances where it may lawfully be authorized to do so, no carrier by railroad shall deliver or relinquish possession at destination of the property covered by this bill of lading until all tariff rates and charges thereon have been paid. The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates, by signature, in the space provided for that purpose on the face of this bill of lading that the carrier shall not make delivery without requiring payment of such charges and the carrier, contrary to such stipulation, shall make delivery without requiring such payment, the consignor (except as hereinafter provided) shall not be liable for such charges. Provided, that, where the carrier has been instructed by the shipper or consignor to deliver said property to a consignee other than the shipper or consignor, such consignee shall not be legally liable for transportation charges in respect of the transportation of said property (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be

found to be due after the property has been delivered to him, if the consignee (a) is an agent only and has no beneficial title in said property, and (b) prior to delivery of said property has notified the delivering carrier in writing of the fact of such agency and absence of beneficial title, and, in the case of a shipment reconsigned or diverted to a point other than that specified in the original bill of lading, has also notified the delivering carrier in writing of the name and address of the beneficial owner of said property; and, in such cases the shipper or consignor, or, in the case of a shipment so reconsigned or diverted, the beneficial owner, [fol. 284] shall be liable for such additional charges. If the consignee has given to the carrier erroneous information as to who the beneficial owner is, such consignee shall himself be liable for such additional charges. Nothing herein shall limit the right of the carrier to require at the time of shipment the prepayment or guarantee of the charges. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Sec. 8. If this bill of lading is issued on the order of the shipper, or his agent, in exchange or in substitution for another bill of lading, the shipper's signature to the prior bill of lading as to the statement of value or otherwise, or election of common law or bill of lading liability, in or in connection with such prior bill of lading, shall be considered a part of this bill of lading as fully as if the same were written or made in or in connection with this bill of lading.

Sec. 9. (a) If all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to all the terms and provisions of, and all the exemptions from liability contained in, the Act of the Congress of the United States, approved on February 13, 1893, and entitled "An act relating to the navigation of vessels, etc.," and of other statutes of the United States according carriers by water the protection of limited liability, and to the conditions contained in this bill of lading not inconsistent therewith or with this section.

(b) No such carrier by water shall be liable for any loss or damage resulting from any fire happening to or on board the vessel, or from explosion, bursting of boilers or breakage of shafts, unless caused by the design or neglect of such carrier.

(c) If the owner shall have exercised due diligence in making the vessel in all respects seaworthy and properly manned, equipped, and supplied, no such carrier shall be liable for any loss or damage resulting from the perils of the lakes, seas, or other waters, or from latent defects in hull, machinery, or appurtenances whether existing prior to, at the time of, or after sailing, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And, when for any reason it is necessary, any vessel carrying any or all of the property herein described shall be at liberty to call at any port or ports, in or out of the customary route, to tow and be towed, to transfer, transship, or lighter, to load and discharge goods at any time, to assist vessels in distress, to deviate for the purpose of saving life or property, and for docking and repairs. Except in case of negligence such carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry the same upon deck.

(d) General Average shall be payable according to the York-Antwerp Rules of 1924, Sections 1 to 15, inclusive, and Sections 17 to 22, inclusive, and as to matters not covered thereby according to the laws and usages of the Port of New York. If the owners shall have exercised due diligence to make the vessel in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from faults or errors in navigation, or in the management of the vessel, or from any latent or other defects in the vessel, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent or other defects or the unseaworthiness was not discoverable by the exercise of due diligence), the shippers, consignees and/or owners of the cargo shall nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril.

(e) If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier

or carriers the provisions of this section shall be modified in accordance with the tariff provisions, which shall be regarded as incorporated into the conditions of this bill of lading.

(f) The term "water carriage" in this section shall not be construed as including lighterage in or across rivers, harbors, or lakes, when performed by or on behalf of rail carriers.

Sec. 10. Any alteration, addition, or erasure in this bill of lading which shall be made without the special notation hereon of the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

[fol. 285] SCHEDULE "C-1"

S. B. No. 111
Cancels S. B. No. 81

Only two supplements to this tariff will be in effect at any time, except as provided for on page 18.

G. F. D. No. 118
Cancels G. F. D. No. 98

Great Lakes Transit Corporation

Local Class and Commodity Tariff Applying Between and from and to Lake Ports of this Corporation shown on Page 5

Governed, except as otherwise provided herein, by the Official Classification (issued by D. T. Lawrence, Agent) S. B.—O. C. No. 6, Supplements thereto or reissues thereof.

The rates named herein, for all-water-transportation, are subject to suspension at the close of navigation and restoration on the opening of navigation of the Great Lakes Transit Corporation, on notice as provided on page 18.

Rates named herein include marine insurance.

Issued August 25, 1932. Effective September 10, 1932.

Issued by W. E. Emblidge, Assistant General Freight Agent. F. W. Dever, Freight Traffic Manager.

Received, Month, —— ; Day, ——; Year, ——.

Great Lakes Transit Corporation Building, 223 Erie Street, Buffalo, N. Y.

(o13720) Printed in U. S. A.

[fol. 286] Rule No. 15.

Marine Insurance

Rates Named Herein Include Marine Insurance

While shipments subject to rates named herein as including Marine Insurance are water-borne at and between lake ports, on the vessels of the Great Lakes Transit Corporation, said corporation assumes liability for loss or damage to said shipments caused by marine perils, to wit: Of the seas and lakes, fire, collision, stranding, jettisons, pirates, assailing thieves, barratry of the master or mariners and all other perils or misfortunes that have or shall come to the hurt or damage of said property, or any part thereof, including general average charges and expenses for which the owner may, under the Maritime Law, be chargeable, but excluding the risks of riots, war or insurrections; any loss from said marine perils for which said Corporation is liable hereunder, to be paid sixty days after proof of loss and proof of interest in said property have been furnished.

Schedule "C-2"

G. L. T.—I. C. C. No. 83.

Issued Mar. 1, 1929.

Effective April 20, 1929.

Rule No. 35.

Marine Insurance

Rates Named Herein Include Marine Insurance

While shipments carried under this tariff are water-borne at and between lake ports, on the vessels of the Great Lakes Transit Corporation, said Corporation assumes liability for loss or damage to said shipments, caused by marine perils, to wit: Of the seas and lakes, fire, collision, stranding, jettisons, pirates, assailing thieves, barratry of the master or mariners, and all other perils or misfortunes that have or shall come to the hurt or damage of said property or any part thereof, including general average charges and expenses for which the owner may under the maritime law be chargeable, but excluding the risks of riots, war or insurrection; any loss from said marine perils for which

said corporation is liable hereunder, to be paid sixty days after proof of loss and proof of interest in said property have been furnished.

[fol. 287] SCHEDULE "C-3"

I. C. C. No. 2470,
Effective December 3, 1931.

Central Freight Assn.
Jones Freight Tariff No. 508.
Issued October 28, 1931.

Rule No. 160.

Governing Marine Insurance on Rail and Lake Traffic

While shipments carried under this tariff are water-borne at and between lake ports on the vessels of the Great Lakes Transit Corporation, the lake carrier and the rail carrier delivering the property to the lake carrier jointly and severally assume liability for loss or damage to said shipments caused by marine perils, to wit: Of the seas and lakes, fire, collision, stranding, jettisons, pirates, assailing thieves, barratry of the master or mariners and all other perils or misfortunes that have or shall come to the hurt or damage of said property or any part thereof, including general average charges and expenses for which the owner may under the maritime law be chargeable, but excluding the risks of riots, war, or insurrection, any loss from said marine perils for which the Lake Line or the Rail Line is liable hereunder to be paid sixty days after proof of loss and proof of interest in said property are furnished said company.

SCHEDULE "C-4"

S. B. No. 10,
Effective April 10, 1932.

Seaboard-Great Lakes I. C. C. No. 6.
Issued April 5, 1932.

Rule No. 35.

Marine Insurance

While shipments carried under this tariff are water-borne at and between River, Canal or Lake ports on the vessels of the Seaboard-Great Lakes Corporation and Great Lakes

Transit Corporation, each of said Corporations, as its interest may appear, assumes liability for loss or damage to said shipments, caused by marine perils, to wit: Of the seas, rivers, canals and lakes, fire, collision, stranding, jettisons, [fol. 288] pirates, assailing thieves, barratry of the master or mariners, and all other perils or misfortunes that have or shall come to the hurt or damage of said property or any part thereof, including general average charges and expense for which the owner may under the maritime law be chargeable, but excluding the risks of riots, war, or insurrections, any loss from said marine perils for which the lake line or the Canal line is liable hereunder, to be paid sixty days after proof of loss and proof of interest in said property are furnished.

SCHEDULE "C-5"

Jones Tariff No. 491.
Issued Nov. 23, 1932. Effective Jan. 1, 1933.

Rule No. 40.

Marine Insurance

While shipments subject to rates named in tariff, as amended, are water-borne at and between lake ports, on the vessels of the G. L. T. Corp., M. A. T. Co., N. U. S. S. Co., Spokane S. S. Co., and Western T. Co., said carriers assume liability for loss or damage to said shipments caused by marine perils, to wit: Of the seas and lakes, fire, collision, stranding, jettisons, pirates, assailing thieves, barratry of the master or mariners and all other perils or misfortunes that have or shall come to the hurt or damage of said property, or any part thereof, including general average charges and expense for which the owner may, under the Maritime Law, be chargeable, but excluding the risks of riots, war or insurrections; any loss from said marine perils for which said carriers are liable hereunder, to be paid sixty days after proof of loss and proof of interest in said property have been furnished.

SCHEDULE "C-6"

Ransom's Tariff No. 27. I. C. C. No. 82,
Issued May 26, 1932. Effective June 29, 1932.

Rule No. 140 A.

(b) Rates named in this Tariff include Marine Insurance while in possession of the Canada Atlantic Transit Company of U. S. or Great Lakes Transit Corporation.
[fol. 289] Liability of Carriers When Rates Include Marine Insurance: Property moving under rates named or provided for in this Tariff, while in the custody of the water carriers, from the time they receive it from shipper or from prior connecting carrier on docks, piers, wharves, bulkheads, platforms, lighters and/or craft transfers and land conveyances at ports of loading of their vessels and while it is water borne on vessels at and between ports and while it is on docks, piers, wharves, bulkheads, platforms, lighters and/or craft, transfers and land conveyances at port of discharge of vessels, until it is delivered to consignee (but not beyond the free time allowed for delivery as designated by tariff lawfully on file with the Interstate Commerce Commission and/or the United States Shipping Board as the case may be, nor while held by the water carrier as warehouseman) or until it is delivered to connecting carriers thereat, is insured:

While water borne against the perils of the seas, rivers, lakes, bays, canals and other waters, fire, collision, stranding, jettison, pirates, assailing thieves, barratry of the master or mariners, and other like perils or misfortunes that have or shall come to the hurt or damage of the said property or any part thereof, including general average charges and expenses for which the owner may under the maritime law be chargeable.

While on docks, piers, wharves, bulkheads, platforms, transfers and land conveyances, against the risks of fire, lightning, floods (meaning rising of navigable water) cyclones, hurricanes, tornadoes, wind-storms, derailment and/or accident to and/or overturning of the land conveyances, the collapse and/or subsidence of docks, piers, wharves, bulkheads, platforms and/or of any buildings thereon.

In no event, however, is the property insured against loss, damage or expense caused directly or indirectly by war, strikes, locked-out workmen, persons taking part in labor disturbances, riots, civil commotions, rebellions or insurrections.

The cost of marine insurance will not be participated in by the rail carriers.

[fol. 290] SCHEDULE "C-7"

I. C. C. No. A-346.

Curlett's Freight Tariff No. 76,
Item No. 830,

Issued October 29, 1931. Effective December 3, 1931.

Marine Insurance

While shipments carried under this tariff are water-borne at and between lake ports on the vessels of the Great Lakes Transit Corporation, the lake carrier and the rail carrier delivering the property to the lake carrier jointly and severally assume liability for loss or damage to said shipments caused by marine perils, to wit: of the seas and lakes, fires, collision, stranding, jettisons, pirates, assailing thieves, barratry of the master or mariners, and all other perils or misfortunes that have or shall come to the hurt or damage of said property or any part thereof, including general average charges and expenses for which the owner may under the maritime law be chargeable, but excluding the risks of riots, war or insurrection; any loss from said marine perils for which the lake line or the rail line is liable hereunder to be paid 60 days after proof of loss and proof of interest in said property are furnished said company.

SCHEDULE "C-8"

Central Frt. Assn. (Jones).

Freight Tariff No. 509-A.

Issued May 27, 1932. Effective July 18, 1932.

Rule No. 60.

Marine Insurance

While shipments subject to rates named herein are water-borne at and between lake ports, on the vessels of the

C. A. T. Co., C. P. Ry., S. S. L., G. L. T. Corp., M. A. T. Co. or N. N. Co., said carriers assume liability for loss or damage to said shipments caused by marine perils, to wit: Of the seas and lakes, fire, collision, stranding, jettisons, pirates, assailing thieves, barratry of the master or mariners and all other perils or misfortunes that have or shall come to the hurt or damage of said property, or any part thereof, including general average charges and expense for which the owner may, under the Maritime Law, be chargeable, but excluding the risks of riots, war or insurrections; any loss from said marine perils for which said [fol. 291] C. A. T. Co., C. P. Ry., S. S. L., G. L. T. Corp., M. A. T. Co. or N. N. Co. is liable hereunder, to be paid sixty days after proof of loss and proof of interest in said property have been furnished.

SCHEDULE "C-9"

I. C. C. No. 200.
Van Ummersen Tariff.
Issued January 1, 1933. Effective 2/15/33.

Rule No. 200.

Liability of Carriers When Rates Include Marine Insurance or When Property is Insured, as Provided in Rule No. 205

Property moving under rates named or provided for in this tariff, while in the custody of the water carriers, from the time they receive it from shipper or from prior connecting carrier on docks, piers, wharves, bulkheads, platforms, lighters and/or craft, transfers and land conveyances at ports of loading of their vessels and while it is water-borne on vessels at and between ports and while it is on docks, piers, wharves, bulkheads, platforms, lighters and/or craft, transfers and land conveyances at port of discharge of vessels, until it is delivered to consignee (but not beyond the free time allowed for delivery as designated by tariff lawfully on file with the Interstate Commerce Commission and/or the United States Shipping Board, as the case may be, nor while held by the water carrier as warehouseman) or until it is delivered to connecting carriers thereat, is insured:

While Waterborne, against the perils of the seas, rivers, lakes, bays, canals and other waters, fire, collision, stranding, jettison, pirates, assailing thieves, barratry of the master or mariners, and other like perils or misfortunes that have or shall come to the hurt or damage of the said property or any part thereof, including general average charges and expenses for which the owner may under the maritime law be chargeable.

While on Docks, Piers, Wharves, Bulheads, Platforms, Transfers and Land Conveyances, against the risks of fire, lightning, floods (meaning rising of navigable waters) cyclones, hurricanes, tornadoes, windstorms, derailment and/or accident to and/or overturning of the land conveyances, [fol. 292] the collapse, and/or subsidence of docks, piers, wharves, bulkheads, platforms and/or of any buildings thereon.

In no event, however, is the property insured against loss, damage or expense caused directly or indirectly by war, strikes, locked-out workmen, persons taking part in labor disturbances, riots, civil commotions, rebellions or insurrections:

Rule No. 205.

Marine Insurance (see Rule No. 200)

Rates Named in This Tariff Include Marine Insurance While in Possession of the Following Carriers

Canada Atlantic Transit Company
Central Vermont Transportation Co.
Cleveland & Buffalo Transit Co.
Detroit & Cleveland Navigation Co.
Eastern Steamship Lines, Inc.
Goodrich-West Ports Steamship Co.
Great Lakes Transit Company
Merchants & Miners Transportation Co.
Newark Terminal & Transportation Company
New England Steamship Company
Ocean Steamship Co. of Savannah
Pere Marquette Line Steamers
Starin New Haven Line
Wisconsin & Michigan Transportation Co.

SCHEDULE "C-10"

Trunk Line's I. C. C. No. A-172
Issued September 27, 1926 Effective November 5, 1926.

Marine Insurance

While shipments carried under this tariff are waterborne at and between lake ports on the vessels of the Canadian Pacific Railway's Steamship Line, Cleveland & Buffalo Transit Co., Detroit & Cleveland Navigation Co., Great Lakes Transit Corporation, Minnesota-Atlantic Transit Co., Northern Navigation Co. (Ltd.) or Rutland-Lake Michigan Transit Co., the lake carrier and the rail carrier delivering the property to the lake carrier jointly and severally assume liability for loss or damage to said shipments caused [fol. 293] by marine perils, to wit: of the seas and lakes, fire, collision, stranding, jettisons, pirates, assailing thieves, barratry of the master or mariners, and all other perils or misfortunes that have or shall come to the hurt or damage of said property or any part thereof, including general average charges and expenses for which the owner may under the maritime law be chargeable, but excluding the risks of riots, war or insurrections, any loss from said marine perils for which the lake line or the rail line is liable hereunder to be paid 60 days after proof of loss and proof of interest in said property are furnished said company.

SCHEDULE "C-11"

Van Ummersen's I. C. C. No. 110.
C. R. C. No. 94.
Issued February 8, 1930 Effective March 15, 1930.

Rule No. 65.

Marine Insurance

While shipments carried under this tariff are waterborne at and between the lake ports on the vessels of the Canada Atlantic Transit Co., Canadian Pacific Railway's Steamship Line, Central Vermont S. S. Line, Cleveland & Buffalo Transit Co., Detroit & Cleveland Navigation Co., Great Lakes Transit Corporation, New England S. S. Lines, Minnesota-Atlantic Transit Company or Northern Navigation Co. (Ltd.), the lake carrier and the rail carrier delivering the property to the lake carrier jointly and severally assume liability for loss or damage to said shipments caused by marine perils, to wit: of the seas and lakes, fire, collision, stranding, jettisons, pirates, assailing thieves, barratry of the master or mariners, and all other perils or misfortunes that have or shall come to the hurt or damage of said prop-

erty or any part thereof, including general average charges and expenses for which the owner may under the maritime law be chargeable, but excluding the risks of riots, war, or insurrections; any loss from said marine perils for which the lake line or the rail line is liable hereunder to be paid 60 days after proof of loss and proof of interest in said property are furnished said company.

[fol. 294] SCHEDULE "D"

Arbuckle Brothers'

Traffic Department, 71 Water Street, New York City

Standard Form for Presentation of Loss and Damage Claims

1816-S
(Claimant's Number).

September 25th, 1933.

Mr. V. F. Carbone, General Agent, Great Lakes Transit Corporation, 229 North Plankinton Avenue, Milwaukee, Wisconsin.

This claim for $25.48 is made against the carrier named above by Arbuckle Bros., New York, for L/D in connection with the following described shipments:

Description of shipment: Sugar.
Name and address of consignor (shipper): Arbuckle Brothers, New York.
Shipped from Brooklyn, New York, to Milwaukee, Wisc.
Final Destination: Milwaukee, Wisc.
Routed via Hedger Transportation, c/o Grt. Lakes Transit.
Bill of lading issued by Hedger Transportation Co.
Date of Bill of Lading: July 20th, 1933.
Paid Freight Bill (Pro) Number 4211 8/9/33.
Original Car Number and Initial Grt. Lakes Trans. Boat "Dixons" Ex Hedger Barge "Ned Hedger."
Name and address of consignee (whom shipped to): H. M. Zander Company, Milwaukee, Wisc.
If shipment reconsigned en route, state particulars: ——

Detailed Statement Showing How Amount Claimed is Determined

(Number and description of articles, nature and extent of loss or damage, invoice price of articles, amount of claim, etc.)

Sugar Received at Destination in a Damaged Condition

Three Hundred and Forty (340) Pounds Extra Fine Gran—340# @ $4.70 per cwt	$15.98
One (1) Bag 4/25s Extra Fine Gran—100# @ $4.85 per cwt.	4.85
Freight on 1,754# @ 26½ per cwt.	4.65
Total Amount Claimed	$25.48

[fols. 295-296] In addition to the information given above, the following documents are submitted in support of this claim:

( ) 1. Original bill of lading, if not previously surrendered to carrier.
( ) 2. Original paid freight ("expense") bill.
( ) 3. Original invoice or certified copy.
4. Other particulars obtainable in proof of loss or damage claimed: Original Bill of Lading—Copy of Freight Bill.

Remarks: ——.

The foregoing statement of facts is hereby certified to as correct.

Arbuckle Bros., R. W. Kruse, Traffic Manager.
Per EJD.

SCHEDULE "E"

Claim Draft No. 5000.

R. A. O. A. F. 235

Great Lakes Transit Corporation,

In full settlement of your Claim No. ——. Our No. ——. Our Agent at ——. Claim No. ——, or various claims listed on statement attached. —— Dollars.

Buffalo, N. Y.

Approved: —— ——, Freight Claim Agent.
Approved: —— ——, Freight Traffic Mgr.
At Sight Pay to the Order of —— ——, $——.

Payable at Option of Holder Through any Bank. No Protest.

—— ——, Auditor. —— ——, Comptroller

To Treasurer: Great Lakes Transit Corp. 223 Erie St. Buffalo, N. Y.

SCHEDULE "F"

G.L.T. Claim	MFST No.	Claimant		Claim	Salvage	Net
20082	20428	American Sugar Refining Co.				
		To labor recoopering 48 Bx. 24/1# Con. Sugar & 15 Bx. 24/1# Brown Sugar	$5.25			
		Rejected a/c damage				
		1 Bx. 12/2# Tabs. 24# @ $7.85 cwt	1.88			
		4 " 24/1# Con. 96# @ 5.95 "	5.71			
		3 " 24/1# Brown 72# @ 5.70 "	4.10			
			16.94			
		Freight on 216# @ 24½¢ cwt.	.53	17.47	9.24	8.23
19598	20538	Thomson & Taylor Co.				
		5 Bags Pepper short (withheld @ Detroit)				
		5 " " @ $13.81	$69.05			
		Freight on 660# @ .63¢ cwt.	4.16	73.21	26.72	46.49
19469	20424	Ambrosia Chocolate Co.				
		32 Bags Cocoa Beans short (withheld @ Detroit)				
		5000# net @ $4.95	247.50			
		Freight—5074# @ .29¢ cwt.	14.71	262.21	48.09	214.12
19468	20422	Ambrosia Chocolate Co.				
		108 Bags Cocoa Beans short (withheld @ Detroit)				
		15089# net @ $4.65	701.64			
		Freight 15322# @ .29¢	44.43	746.07	162.29	583.78
19467	20423	Ambrosia Chocolate Co.				
		224 Bags Cocoa Beans short (withheld @ Detroit)				
		2 " " " " used in replacing 6 bags wet and damaged and short				
		226 Bags or 31,658# net @ $4.65	1,472.09			
		Freight 32,143# @ .29¢ cwt.	93.21	1,565.30	336.61	1,228.69

19470	20419	Ambrosia Chocolate Co.				
		6 Bags Cocoa Beans short (withheld @ Detroit)				
		2108# net @ $4.95	104.35			
		Freight 2115# @ .34¢	7.19	111.54	9.01	102.53
20120	3940	Ad. Seidel & Sons				
		11 Cs. Canned Apples short (withheld @ Detroit & Chicago)				
		2 Cans Ditto short " " " " "				
		5-2/3 Dz. @ $3.50	19.83			
		Less trade rebate	.57			
			19.26			
		Freight 485# @ .35¢ cwt.	1.70	20.96	7.15	13.81
19521	20536	Thomson & Taylor Co.				
		66 Bags Pimentos short (withheld @ Detroit)				
		66 Bags @ $6.67	440.22			
		Freight 9966# @ 63¢ per cwt.	63.00	503.22	297.00	206.22
19846	20453	Sears, Roebuck & Co.				
		3 Bales Rugs short (withheld @ Detroit)				
		133 Yds. @ .67¢	89.11			
		Less 4%	3.56			
			85.55			
		Freight 120# @ 1.33	1.60	87.15	15.00	72.15
19799	Various	Dryden Rubber Company				
	20527	60 Bales Rubber Damaged & Rejected		866.16	414.22	451.94
	20528	21 " " " "		303.17	144.98	158.19
	20541	208 " " " "		3,002.67	1,435.95	1,566.72
	20545	173 " " " "		2,959.80	1,357.69	1,602.11

Brought forward:

[fols. 299-300]

G.L.T. Claim	MFST No.	Claimant		Claim	Salvage	Net
19512	20377	F. W. Woolworth Co.				
		1-5/12 Dz. #300-10 Dz. Mugs broken & worthless	2.03			
		1-5/12 Dz. @ $1.43	.09	2.12	.....	2.12
		Freight				
19638	20471	The Great Atlantic & Pacific Tea Co.				
		2 Crtns. Chili Sauce short broken & worthless		2.24	.....	2.24
		2 Crtns. @ $1.12				
19801	20524	Marshall Field & Co.				
		Following shortage (withheld @ Detroit)				
		5 Dz. Childrens Gowns #31213 @ $3. Dz.	15.00			
		30 Dz. " Kimonas #31203 @ 3. Dz.	90.00			
		3 Dz. " " #31204 @ 1.60 "	4.80			
		4 Dz. " " #31206 @ 2.55 "	10.20			
		9 Dz. " " @ 2.65 "	23.85	143.85	76.00	67.85
19975	20521	Stein, Hall Mfg. Co.				
		51 Bags Tapioca short (withheld @ Detroit)	208.08			
		10404# Tapioca @ $2. per cwt.	35.19	243.27	125.00	118.27
		Freight 10506# @ 33½¢ per cwt.				
19475	20530	Featheredge Rubber Co.				
		152 Bales Rubber damaged and rejected.	2,053.56			
		34226# @ .06 per lb.	6.85	2,060.41	1,011.16	1,049.25
		Rubber Ass'n Fee				
19939	20432	Geo. E. Keiser				
		3201# Sugar short a/c torn bags @ 5.03	166.04			
		534 Bags damaged & sold at discount of .30¢	160.20	326.20	.....	326.24

[fols. 299-300]

G.L.T. Claim	MFST No.	Claimant		Claim	Salvage	Net
19592	20431	Geo. E. Keiser				
	300 Bales	10/10s Sugar short (withheld @ Detroit)				
		30,000# @ $5.18		1,554.00	470.00	1,084.00
19593	20433	Geo. E. Keiser				
		122 Bales 10/10s Sugar short (withheld @ Detroit)				
		12,200# @ $5.18		631.96	244.00	387.96
19802	20525	Marshall Field & Co.				
		1-1/2 Dz. Kimonas short from cases	@ $2.16-2/3	3.25		
		5/12 Dz. " Dmg. & Rejected	@ 2.16-2/3	.91		
		2/12 Dz. " " "	@ 1.60	.26		
		1/12 Dz. " " "	@ 2.55	.21	4.63	1.34 3.29
19952	W.B.8.	P. V. Bright & Co.				
		1 Cs. Admiral Sardines short	@ 2.75	2.75		
		2 " " " "	@ 3.40	6.80		
		1 " Blueberries damaged	@ 3.60	3.60		
		2 " Sardines recoopered-labor		1.00		
		4 " Blueberries recoopered-labor		1.00		
		11 Cans " Dmg. & Rejected	@ .60	6.60	21.75	1.50 20.25
20042	20435	Geo. E. Keiser				
		90-100# Bags Fine Burlap Sugar Short (withheld at Detroit)				
		900# @ $5.03		452.70		
		29 Bags Torn—loss 340#	@ $5.03	17.40		
		29 " Sold a/c recoopered	@ .30¢ Disc	8.70	478.80	152.00 326.80

Brought forward:

[fols. 301-302]

G.L.T. Claim	MFST No.	Claimant		Claim	Salvage	Net
20109	20519	American Radiator Co.				
		7 Grate Bars broken @ $13.25	92.75			
		3 Regulator covers " @ .60	1.80			
			94.55			
		Less trade discounts 37-25-10%	40.21			
		Freight 474# @ 23½¢ per cwt	1.11	41.32	1.56	39.76
20589	20427	National Sugar Refining Co.				
		198 Bags 4/25s Sugar short (withheld @ Detroit)				
		19800# @ $4.85 per cwt	960.30			
		46 Bags 20/5s Sugar Short (withheld @ Detroit)				
		4600# @ $4.95 per cwt	227.70			
		61 Bags 10/10s Sugar Short (withheld @ Detroit)				
		6100# @ $4.85 per cwt	295.85			
		30 Bags 10/10 torn lost wgt. 258# @ 4.85	12.51			
		4 Bags 20/5 torn lost wgt. 80# @ 4.95	3.96			
		12 Bags 4/25 torn lost wgt. 84# @ 4.85	4.07			
		42 Bags 10/10 damaged sold @ discount .45¢	18.90			
		4 Bags 20/5 damaged sold @ discount .50¢	2.00			
			1,525.29			
		Freight 31,277# @ 24½¢	76.51	1,601.80	530.00	1,071.80
20216	20518	Worlds Dispensary Med. Ass'n.				
		1 Dz. Patent Medicine short @ $9.00	9.00			
		7/12 " " " broken 9.00	5.25			
		2/3 " " " " 9.00	6.00			
		Cartons to replace those damaged—34 @ 10¢	3.40			
		Labor reconditioning	5.25	28.90	.....	28.90

[fols. 301-302]

G.L.T. Claim	MFST No.	Claimant		Claim	Salvage	Net
20611	20534	Kaempfer's				
		1 Bag Canary Seed short				
		220# @ $3.30 per cwt.		7.26	.....	7.26
20020	20548	American Sugar Refining Co.				
		24 Bbls. Sugar Short (withheld @ Detroit)				
		8400# @ $4.80	403.20			
		20 Bbls. Sugar short (13 Withheld @ Detroit)				
		(7 of these rejected @ Chicago)				
		7000# @ 4.80	336.00			
		5 Sx. 50/2s Sugar Short				
		500# @ 5.05	25.25			
			764.45			
		Freight 16,973# @ 24½¢ per cwt.	41.58	806.03	438.35	367.68
20020	20549	American Sugar Refining Co.				
		44 Bxs. 24/1 Sugar damaged & rejected				
		1056# @ $5.95	62.83			
		74 Bxs. 24/1 Sugar dmg. & rejected				
		1776# @ $5.95	105.67			
		171 Bbls. Sugar short (withheld-Detr.)				
		59850# @ $4.80	2,872.80			
			3,041.30			
		Freight 66,913# @ 24½¢ per cwt.	163.94	3,205.24	1,672.50	1,532.74

Brought forward:

[fols. 303-304]

G.L.T. Claim	MFST No.	Claimant		Claim	Salvage	Net
20139	20526	E. R. Squibb & Son				
		To damage to various boxes of Medicines broken stained & cartons damaged, requiring renewal		114.74	36.26	78.48
19945	3939	Elliott Roll & Wuerttemberger (J. F. Lalla)				
		10 Crtns. String Beans rejected (20 Ds.) @ .67½	$13.50			
		182 Cans String Beans rejected	10.24			
		Freight 650# @ .40¢ per cwt.	2.60	26.34	12.70	13.64
19840	3939	Elliott Roll & Wuerttemberger (Mallot)				
		35 Cs. Tomatoes rejected (70 Ds.) @ .70¢	49.00			
		41 Cans Tomatoes rejected @ .70¢	2.39			
		Freight 1340# @ .40¢	5.36	56.75	23.00	33.75
19840	3938	Elliott Roll & Wuerttemberger (Mid City)				
		91 Cans Tomatoes damaged & rejected				
		91 Cans @ .70¢ per Ds.	5.31			
		Freight 136½# @ .44¢ per cwt.	.61	5.92	4.55	1.37
19590	20434	Geo. E. Keiser				
		184-100# Bags Fine Toweling Sugar Short (Withheld at Detroit)				
		18400# @ $5.03		925.52	308.70	616.82
19591	20436	Geo. E. Keiser				
		1476-100# Bags Fine Toweling Sugar Short (Withheld at Detroit)				
		147,600# @ $5.03		7,424.28	2,824.27	4,600.01
19938	20429	Geo. E. Keiser				
		138-100# Bags Fine Toweling Sugar Short (Withheld at Detroit)				

[fols. 303-304]

G.L.T. Claim	MFST No.	Claimant		Claim	Salvage	Net
		13,800# @ $5.03	694.14			
		218-100# Bags Same Torn with loss of 2766#				
		2766# @ 5.03	139.13			
		218 Bags Sold @ discount of 30¢	65.40	898.67	287.85	610.82
19857	20529	Inland Rubber Co.				
		194 Bales Rubber Damaged and rejected.				
		50,886# @ 7¼		3,689.23	1,892.09	1,797.14
21062	20426	California & Hawaiian Sugar Refining Corp.				
		61-100# Bags Yellow D. Sugar Short (Withheld at Detroit)				
		6100# @ $4.28	261.08			
		164-100# Bags Berry B. Sugar Short (Withheld at Detroit)				
		16,400# @ 5.03	824.92			
		166-100# Bags Golden C. Sugar Short (Withheld at Detroit)				
		16,600# @ 4.43	735.38			
		18-100# Bags 10/10 Berry Sugar Short (Withheld at Detroit)				
		1800# @ 5.18	93.24	1,914.62	575.00	
		26-100# Bags Yellow D. Sugar Wet & Rejected @ $4.28	111.28			
		138-100# Bags Berry B. Wet & Rejected @ $5.03	694.14			
		31-100# Bags Golden C. Wet & Rejected @ $4.43	137.33	942.75	747.22	
				2,857.37	1,322.22	1,535.15
				$37,677.57	$15,699.00	$21,978.57

[fol. 305] Apportionment of Loss Among Underwriters

Policies Written for Term April 15, 1933—December 12, 1933

Clauses: Great Lakes Transit Corp., Special

Claim:	$22,338.57
Deduct as per policy:	1,000.00
Claim (Net):	$21,338.57

Fleet Insurance $1,100,000.00

American Insurance

Policy No.	Company	Insures	Pays
CP-97189	Atlantic Mutual	30%	$6,401.57
13950 L	Home Insurance Co.	10%	2,133.85
4279	Union Marine & General	10%	2,133.86
2461	Sun Insurance Co.	8%	1,707.09
LC-267	Eagle, Star & British Dominions	5%	1,066.93
6669	Fireman's Fund	4%	853.54
ITF-5194	Great American	3%	640.16
		70%	$14,937.00

English Insurance

Policy No.	Company	Insures	Pays	£	s	d
33/DF/195	Lloyd's London	11.435%	$2,440.06			
	Edinburgh Assurance	2.995	639.09			
	British Traders'	2.995	639.09			
	Royal Exchange	2.995	639.09			
	Cornhill	2.995	639.09			
	Sun	2.995	639.09			
	Economic	1.795	383.03			
	London Assurance	1.795	383.03			
		30%	$6,401.57			

Recapitulation

American Insurance Pays	$14,937.00
English Insurance Pays	6,401.57
	$21,338.57

Marsh & McLennan,
Average Adjusters
By: L. Smith.

Buffalo, N. Y.
January 22, 1934

[fol. 306] In United States District Court

Answer of Great Lakes Transit Corporation to the Intervening Petition of Atlantic Mutual Insurance Company, in Cases Nos. 3168 and 3170—Filed June 14, 1934

Great Lakes Transit Corporation, for its answer to the intervening petition of Atlantic Mutual Insurance Company in the above entitled consolidated cause:

1. Admits the allegations contained in the Articles of the said intervening petition numbered "First" and "Second."

2. Denies, upon information and belief, each and every allegation contained in the Article of the intervening petition numbered "Third."

3. Admits that heretofore and on or about the 23rd day of May, 1933, said intervening petitioner insured Great Lakes Transit Corporation under and pursuant to the special form attached to Policy No. CP-97189 of said petitioner, a copy of which special form is a part of Schedule "A" annexed to the said intervening petition, and that similar insurance was carried with and provided by other insurers in the aggregate amount of $1,100,000; but denies, upon information and belief, each and every other allegation contained in the Article of the intervening petition numbered "Fourth."

4. Admits the allegations contained in the Articles of the intervening petition numbered "Fifth" and "Ninth," but alleges that prior to the time said intervening petition was filed hearing had been had and proof taken as to the question of fault for the said collision, and this Court had filed its opinion holding the Dixon and the King mutually at fault, that interlocutory decree has not as yet been entered in accordance with such opinion, and Great Lakes Transit Corporation intends to appeal from said decree and has claimed and still claims that said Steamer Dixon and those in charge of her were not responsible for any negligence or fault causing or contributing to the said collision.

5. Denies, upon information and belief, each and every allegation contained in the Article of the said intervening petition numbered "Sixth," except that said Great Lakes Transit Corporation admits the amount of damage and loss [fol. 307] by reason of said collision to all of said cargo has not as yet been definitely determined, but as nearly as can now be ascertained the amount thereof will approximate $30,000.00. Great Lakes Transit Corporation further admits that the sum of $6,401.57 has been heretofore paid to it by said petitioner, but alleges that the said amount

was paid to Great Lakes Transit Corporation for its own account in the manner and under the circumstances hereinafter alleged, and not otherwise.

6. Admits the allegations contained in Article "Seventh" of the said intervening petition, except that it denies, upon information and belief, that the payments by intervening petitioner referred to in said petition have been or will be made in the manner or for the purposes therein alleged, and alleges that such payments have been and will be made in the manner and for the purposes hereinafter alleged, and not otherwise.

7. Denies, upon information and belief, each and every allegation contained in the Article of the intervening petition numbered "Eighth."

8. Denies that all and singular the premises set forth in said intervening petition are true, but admits the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Further answering said intervening petition, Great Lakes Transit Corporation alleges, upon information and belief, as follows:

9. The cargo of the Dixon referred to in said intervening petition was shipped upon said vessel and was being transported by the Great Lakes Transit Corporation at the time of such collision, under and pursuant to the provisions of bills of lading issued by Great Lakes Transit Corporation and accepted by the several shippers and owners of cargo, and under and pursuant to tariff provisions duly filed by said Great Lakes Transit Corporation as a common carrier, with the Interstate Commerce Commission, and being in full force and effect and forming a part of the provisions of said bills of lading by reference. By and under such bill of lading and applicable tariff provisions, Great Lakes Transit Corporation intended to and did assume liability for all loss or damage to said cargo, including General Average charges and expenses for which the cargo owner [fol. 308] might under the maritime law be chargeable, caused by or resulting from collision or other perils of the sea. Reference is hereby made to the said bills of lading and tariffs, the originals or true copies of which will be in-

troduced in evidence at the hearing upon the intervening petition, for a full statement of the provisions, terms and conditions thereof. The Great Lakes Transit Corporation has thereby become liable to pay all losses sustained by the shippers and owners of cargo laden on board the Dixon as the result of the collision involved in this proceeding. In due and ordinary course, some of the shippers and owners of cargo lost or damaged as a result of said collision, have heretofore made claims therefor against Great Lakes Transit Corporation, and further similar claims will hereafter be presented to Great Lakes Transit Corporation for additional large amounts on account of such loss and damage. Great Lakes Transit Corporation has heretofore approved and paid such cargo claims in the amount of at least $22,338.57, and will hereafter be called upon and compelled to pay and will pay additional large amounts to shippers and cargo owners on account of claims heretofore made or which may hereafter be made against it.

10. The policies of insurance of Atlantic Mutual Insurance Company and other policies of insurance mentioned in said intervening petition were intended to and did insure and indemnify Great Lakes Transit Corporation against the liability assumed by it as aforesaid to shippers and owners of cargo for loss or damage, including General Average and expenses, resulting from collision and from perils of the sea. In due and ordinary course and according to established custom and practice a partial adjustment of such of the claims of shippers and cargo owners as had been approved and paid by Great Lakes Transit Corporation up to January 22, 1934, was prepared in the usual form by Marsh & McLennan, Average Adjusters, in the amount of $21,338.57, being the said amount of $22,338.57 heretofore paid by Great Lakes Transit Corporation to owners of cargo, less the deductible average of $1000.00 provided in said policies, and claim for reimbursement of said amount was made on behalf of Great Lakes Transit Corporation to Atlantic Mutual Insurance Company and other underwriters mentioned in said intervening petition. On or about the 27th day of January, 1934, said Atlantic Mutual Insurance Company paid its proper proportion, to wit, thirty per cent [fol. 309] or $6,401.57, of the said amount of $21,338.57, and the other underwriters mentioned in the intervening peti-

tion have also heretofore paid their proper proportions thereof. As and when the total amount of all loss and damage to cargo has been definitely ascertained and all such claims have been finally approved and paid by the Great Lakes Transit Corporation, a final adjustment will be similarly prepared and presented to said Atlantic Mutual Insurance Company and other underwriters, for reimbursement, and in the meantime one or more additional partial adjustments and statements may also be presented, all in due and ordinary course and according to established custom and practice. The said intervening petitioner has not and will not have any rights whatever in this proceeding, except such as it has derived or may derive from or through Great Lakes Transit Corporation on account of payments made under its agreement to insure and indemnify Great Lakes Transit Corporation against liability as aforesaid, and is not entitled to any rights of subrogation against said Great Lakes Transit Corporation or to the granting of any relief or the entry of any form of decree which will in any way interfere with the rights and interests of its assured, the said Great Lakes Transit Corporation, or affect the legal liability of the said intervening petitioner under the said policy of insurance.

11. Great Lakes Transit Corporation does not waive its rights to appeal from the finding of the Court that the Dixon was partly at fault for the said collision, but if at any time or at any stage of this cause an interlocutory or final decree be entered pursuant to or based upon a holding that the Dixon and the King were mutually at fault for the said collision, such decree, by reason of the premises and under the actual facts of the case, should direct that all damages, including damage to the cargo of the Dixon, be equally divided, and such cargo damage for which Great Lakes Transit Corporation has become liable to pay and has paid or will hereafter pay should in all respects be treated as a loss sustained by it on its own account as a result of the collision; and under such circumstances an award to intervening underwriters against the King and/or her owner for the full amount of loss or damage to the cargo of the Dixon and/or for the full recovery of the payments made by the said intervening underwriters or any of them would be contrary to and inconsistent with

[fol. 310] the ultimate legal rights and liabilities of all parties to this litigation, and prejudicial to the rights of Great Lakes Transit Corporation under its said policies of insurance.

Wherefore, said Great Lakes Transit Corporation prays that the said intervening petition be dismissed with costs, or in the alternative that if said petitioner be permitted to intervene in this proceeding, such conditions be imposed as will protect said Great Lakes Transit Corporation from prejudice and interfere with its lawful rights and interests, and permit the entry of interlocutory and final decree in accordance with the ultimate legal rights of all parties, and that said Great Lakes Transit Corporation may have such other and further relief in the premises as it may be justly entitled to receive.

Great Lakes Transit Corporation, by David S. Jackson, One of Its Proctors. Brown, Ely & Richards, Proctors for Great Lakes Transit Corporation, Office & P. O. Address: 1317 Chamber of Commerce Bldg., Buffalo, N. Y.

Duly sworn to by W. R. Evans. Jurat omitted in printing.

[fol. 311] IN UNITED STATES DISTRICT COURT

ANSWER OF INTERSTATE STEAMSHIP COMPANY TO THE INTERVENING PETITION OF ATLANTIC MUTUAL INSURANCE COMPANY, IN CASES NOS. 3168 AND 3170—Filed June 26, 1934

Now comes Interstate Steamship Company, libelant in cause No. 3168, and claimant to the steamer Willis L. King, her engines, boilers, etc., and also respondent, in cause No. 3170, and files this its answer to the intervening petition of Atlantic Mutual Insurance Company filed in the above entitled consolidated cause, and says:

1. Admits the allegations contained in Article "First" of the intervening petition, and as to Article "Second" of the petition admits that at the time mentioned in said Article, the steamer- George D. Dixon and Willis L. King were in collision in the St. Clair River, by reason of which colli-

sion the steamer Dixon sustained some damage, but as to the allegation that the further voyage of the Dixon was frustrated and that much of the cargo laden thereon was damaged, wet and lost, said Interstate Steamship Company does not have information as to such allegations (except as stated in paragraph 2 of this answer) and, therefore, denies the same and asks for proof thereof.

2. Respecting the allegations of Articles "Third" and "Fourth" of said intervening petition, said Interstate Steamship Company alleges that it is without information as to the same except that on June 15th there was filed in this cause a stipulation as to forms of bills of lading and tariffs, under which cargo was shipped and was being carried on the steamer George D. Dixon, and also as to insurance relating to said cargo, and relying upon representations made by counsel for the steamer George D. Dixon and of counsel representing underwriters claiming to have issued policies respecting the cargo, said stipulation before being filed was executed by counsel for Interstate Steamship Company. One provision of the stipulation (paragraph 8) is that it was entered into for the purpose of permitting the court to pass upon the legal rights of underwriters claiming to have written insurance covering cargo in so far as the same concerns the form of interlocutory decree to be entered and a provision in said paragraph 8 [fol. 312] of the stipulation is that the stipulation should be without prejudice to the right of any party to introduce or offer further evidence, prior to the entry of final decree, that might be deemed material to any question or issue in connection with the said intervening petition of Atlantic Mutual Insurance Company with respect to cargo. Accordingly, said Interstate Steamship Company now denies the allegations of Articles "Third" and "Fourth" of said intervening petition and reserves the right to make or require proof, as it may be advised, respecting the allegations of said Articles "Third" and "Fourth" of the intervening petition.

3. Respecting allegations of Articles "Fifth" and "Ninth" of said intervening petition, Interstate Steamship Company admits that libel was filed with allegations as stated in said Article "Fifth," and as to said Article "Ninth" the Interstate Steamship Company denies that the

collision between the steamer- George D. Dixon and Willis L. King was caused by any fault and negligence of the steamer Willis L. King or of those in charge of her, or by any fault or negligence of said Interstate Steamship Company, and avers that said collision was due solely to the faults of the steamer George D. Dixon and those in charge of her navigation in the manner and in the respects set up by Interstate Steamship Company in the libel in cause No. 3168 and in the answer in cause No. 3170, both of which are now on file in this consolidated cause and to which reference is hereby made, the allegations of said libel in No. 3168 and of the answer in No. 3170 being here incorporated by reference. Interstate Steamship Company alleges that prior to the filing of said intervening petition there had been a trial before this Honorable Court on the issues raised by the pleadings as to the question of fault between the Steamers Dixon and King respecting said collision; that full proof was taken before the Court on that issue and thereafter and before the filing of the intervening petition, this Court filed a written opinion holding the Dixon and the King mutually at fault and that the damages should be divided accordingly, costs to be borne equally by Interstate Steamship Company and Great Lakes Transit Corporation. And the Court further ordered that the matter should be referred to a Master Commissioner to determine and assess the damages and make report to the Court.

[fol. 313] 4. Respecting the allegations of Articles "Sixth," Seventh" and "Eighth" of the intervening petition, Interstate Steamship Company alleges that it is without information respecting said allegations, but states, as mentioned in Article 2 of this answer, that a stipulation has been executed and filed for the purposes stated in said Article 2, to which said Article 2 reference is hereby made, but said Interstate Steamship Company did not intend by the signing of said stipulation to admit, and does not now admit, that cargo being carried on the Dixon was damaged to the extent named in said intervening petition, nor is admission made that cargo underwriters have paid the amounts named in the intervening petition or in the stipulation, and said Interstate Steamship Company denies the allegations of the "Sixth," "Seventh" and "Eighth" Articles of said intervening petition, and full proof, before the Commissioner on damages, or otherwise, is demanded re-

specting all such damage and payments, and all matters mentioned in said Article "Sixth," "Seventh" and "Eighth" of the intervening petition, in the event such allegations become material.

5. Respecting the allegations of the "Tenth" Article of the intervening petition, Interstate Steamship Company denies that all and singular the premises set forth in the intervening petition are true, but admits the jurisdiction of the United States and of this Honorable Court.

Wherefore, said Interstate Steamship Company prays the Court that the issues so arising on the petition of said Atlantic Mutual Insurance Company between cargo underwriters and the owner of the Dixon may be determined, but that the rights of Interstate Steamship Company be preserved so that, both as to the form of Interlocutory Decree and on determination of damages, the same may be assessed and final decree entered according to the Court's ruling that the Steamers Willis L. King and George D. Dixon were mutually at fault and that therefore, the damages and costs be equally divided between the owners of said steamers, except that as to costs due to controversies arising between the owner of the Dixon and her cargo underwriters, no part thereof to be assessed against the King and/or her owner. And said Interstate Steamship Company asks for any and [fol. 314] all other and further relief to which it may be entitled in the premises.

Duncan, Leckie, McCreary, Schlitz & Hinslea, Proctors for Interstate Steamship Company.

Duly sworn to by Frederick L. Leckie. Jurat omitted in printing.

[fol. 315] IN UNITED STATES DISTRICT COURT

OPINION AND DECISION OF THE COURT, ON SETTLEMENT OF INTERLOCUTORY DECREE, IN CASES NOS. 3168 AND 3170—Filed July 9, 1934

WEST, J.:

Because an innocent cargo owner may look for its damages to either of two colliding vessels in fault, as well as

to both, the underwriters claim that in enforcing their rights of subrogation they should be permitted a decree that will require the non-carrying vessel, the King, to pay all cargo loss in the first instance. But when the case was heard, both vessels had been charged with fault, the charges were sustained, and as a result the decree, under the decisions cited in the briefs, must be in favor of the owner of the Dixon as bailee and trustee for cargo owners, and run against such owner, The Great Lakes Transit Corp. individually, and against the owner of the King for a moiety of the damages against each, with the usual provision for recovery from either for any deficiency not collectible from the other.

This being the actual situation, I can see no reason for allowing the underwriters to now assert a right of cargo owners which might exist under some circumstances but not under the pleadings and the facts in this case. I refer, of course, to the right to compel full payment to be made by the King. Subrogation should depend upon actualities and not theories. Here the underwriters have paid and will pay the amount of cargo loss into the hands of the owner of the Dixon as bailee and trustee for cargo owners, and also as the common carrier liable under the bills of lading for such losses. The underwriters are entitled to be subrogated to all rights of those for whose benefit these payments were and will be made, but in this case that does not include the right of any owner of cargo to have full payment from the King, the effect of the court's decision being that due to the fault of both vessels, no such right existed. The underwriters are entitled to enforce the liability of the King and that of the Dixon each for a moiety of the cargo losses. When that is done they will have their outlays back and the owners of the vessels will have paid out what is required by the law in view of the finding of mutual fault. [fol. 316] The case of Erie R. R. Co. v. Erie Transportation Co., 204 U. S. 220, strongly relied on by the underwriters, is so different in its facts that I think it has little if any application. See The New York, 108 Fed. 102, 105 (C. C. A. 6).

The court will sign the decree presented by proctors for the owners of the Dixon.

S. H. West, Judge.

July 9, 1934.

IN UNITED STATES DISTRICT COURT

LETTER, DATED JULY 10, 1934, FROM S. H. WEST, JUDGE, TO MESSRS. STANLEY & GIDLEY AND TO MESSRS. BROWN, ELY & RICHARDS, RE OPINION—Filed —— —, 1934

Cases Nos. 3168 and 3170

(Copy)

Cleveland, O., July 10, 1934.

Messrs. Stanley & Gidley, Marine Trust Co. Bldg., Buffalo, N. Y.; Brown, Ely & Richards, 1317 Chamber of Commerce Bldg., Buffalo, N. Y.

Interstate SS. Co. v. Great Lakes Transit Corp.

GENTLEMEN:

I filed an opinion yesterday with which I am satisfied save that it should have expressed the court's view that this insurance was paid for by and was primarily for the benefit of cargo owners.

[fol. 317] Mr. Garry has just called my attention to the inconsistency between the decree presented by Mr. Richards and the opinion; and I now return both forms of decree with the request that one be prepared satisfactory in form to Messrs. Stanley and Richards and in conformity to the opinion, and send to me. It may contain the provision that under the contracts of carriage the Transit Corp. assumed liability for all losses to cargo regardless of fault. I am unwilling to have a finding against the King for the full damages sustained by Milko. The decree should express the court's view herein indicated as to the beneficial interest of the cargo in the insurance.

Mr. Garry has questioned the propriety of staying all proceedings before the master except with respect to Milko in case of appeal. I have nothing to suggest about that; perhaps you gentlemen can agree.

I strike out the last sentence of the opinion.

Very truly yours, S. H. West, U. S. Dist. Judge.

Copy to Thos. H. Garry, Esq., Cleveland, O.

IN UNITED STATES DISTRICT COURT

SUPPLEMENTAL OPINION AND DECISION OF DISTRICT COURT ON SETTLEMENT OF INTERLOCUTORY DECREE—Filed July 27, 1934

Cases Nos. 3168 and 3170

WEST, J.:

After considering Mr. Richards' brief in the form of a letter of the 24th inst., with the authorities cited, the court is still of opinion that the cargo owners are the real beneficiaries of this insurance.

The Great Lakes Transit Corp. assumed to the shippers an obligation to provide marine insurance on their [fol. 318] cargo, and also assumed the common law obligation of a carrier to carry safely. The policies in question covered the carrier's legal liability resulting from a breach of either of the foregoing obligations or both, and while the cargo owners or shippers probably lacked any insurable interest in the carrier's legal liability for a direct loss of their goods due to collision, they did have such interest respecting the legal liability of the carrier arising from failure to procure marine insurance on their goods. Therefore, and having also in view the fact that the shippers pay the insurance premiums, they are the beneficiaries of the policies, in so far as this latter liability is concerned, though having no insurable interest in any other subject-matter covered by the insurance. Lowery v. Connecticut Fire Ins. Co., 70 F. (2d) 324, which expresses the rule regarding necessary insurable interest.

The policies here involved recognize and cover the foregoing differing legal liabilities of the carrier. The language "on the assured's liability to others in respect to cargo" is probably sufficient, for failure to procure marine insurance on cargo as required by tariff would seem to be "in respect to" cargo. But there is further language of the policy stating the nature of the carrier's risks and liabilities in which insurance of cargo is especially mentioned, and indemnity is granted the assured for all risks to the extent of its liability to the owners.

It was proper and might have been very important for the shippers to have the protection of marine insurance as well as that of a carrier's common law liability. In ef-

fect this would give them two funds to which they might look. And the underwriters having furnished indemnity for both classes of liability, were interested to have the proceeds of the policies so applied as to preserve all their subrogation rights. When the loss occurred the rights of all the parties became fixed and were not affected by the payment by the carrier of the losses out of its own moneys on the theory that it could thus deal with the liability as one for loss of cargo and deny the underwriter's subrogation. This would allow the carrier to profit by its own wrong, failure to fulfill its obligation under its tariff to furnish marine insurance on the cargo. In brief, as to legal liability for direct loss of cargo, the owners had no insurable interest, and the policy was for the sole benefit of the carrier. If nothing else were involved, the doctrine of [fol. 319] the Wager case, 150 U. S. 99, would apply. As to liability for failure to procure insurance, which liability, I think, is within the coverage and the very broad language employed in the policies, the carrier was only the nominal assured, the owners were the real beneficiaries under the "whom it may concern" clause, and the above doctrine has no application.

The decree furnished by the underwriters will be signed, with the changes necessary to conform it to this opinion.

S. H. West, Judge.

July 27, 1934.

In United States District Court

Interlocutory Decree, in Cases Nos. 3168 and 3170—Filed July 27, 1934

These causes having duly come on to be heard on the libel of Interstate Steamship Company against Great Lakes Transit Corporation (Admiralty No. 3168), and on the libel of Great Lakes Transit Corporation as owner of the Steamer George D. Dixon and as carrier and/or bailee of her cargo, against the Steamer Willis L. King, her engines, etc., and Interstate Steamship Company (Admiralty No. 3170), in which last numbered cause John Milko filed an intervening libel against the Steamer Willis L. King, her engines, etc., and Great Lakes Transit Corporation was impleaded by petitions filed by Interstate Steamship Com-

pany under Admiralty Rule 56 as respondent, to answer the libels on behalf of cargo and of John Milko; and all the causes having been consolidated before trial; and the case [fol. 320] having been heard on the said libels, answers and petitions of the parties, and upon the proofs in support thereof; and having been duly argued by the respective advocates and due deliberation having been had; and the Court on March 29, 1934, having filed its opinion in writing in which it found both vessels, to-wit: the Steamer Willis L. King and the Steamer George D. Dixon at fault, and divided the damages between said vessels and their owners accordingly, costs to be borne equally by the owners Interstate Steamship Company and Great Lakes Transit Corporation; and libelant Great Lakes Transit Corporation having filed a petition for reargument herein, and due deliberation having been had thereon, and the Court on May 7, 1934, having filed its further decision denying such reargument; and a petition of intervention having been thereafter filed herein by Atlantic Mutual Insurance Company, a corporation, intervening herein for its interest as one of the insurers and underwriters of the cargo laden on board the Steamer George D. Dixon against the Steamer Willis L. King, her engines, etc., and against Interstate Steamship Company, respondent herein; and answer of Great Lakes Transit Corporation to said intervening petition having been filed; and a stipulation dated May 27, 1934, having been thereupon filed, stipulating that such intervening petition stand and serve herein as the intervening petition of the certain other therein named insurers and underwriters of cargo laden on board the Steamer George D. Dixon therein named who are similarly situated, together with a stipulation to the effect that the interests of such other similarly situated insurers and underwriters of cargo laden on board the Steamer George D. Dixon may be governed by the determination with respect to the rights of said Atlantic Mutual Insurance Company, and a further stipulation dated June 13, 1934, having been filed, stipulating into evidence certain documents therein referred to, together with certain facts in said stipulation set forth, for the purpose of permitting the Court to pass upon the legal rights of the Atlantic Mutual Insurance Company and other similarly situated underwriters and insurers of cargo laden on board the Steamer George D.

Dixon; and such issues having come on for hearing and argument and having been heard by the Court upon all pleadings and proceedings heretofore had and taken herein, and upon said intervening petition, answer and stipulations; and due deliberation having been had, and the [fol. 321] Court having filed its further opinion in writing dated July 9, 1934, in which it determined that decree herein run against the owner of the Steamer George D. Dixon individually, and the owner of the Steamer Willis L. King for a moiety of the damages sustained by cargo laden on board the Steamer George D. Dixon against each, with the usual provision for recovery from either for any deficiency not collectible from the other, and having further determined that under the contracts of carriage the Great Lakes Transit Corporation, owner of the Steamer George D. Dixon, assumed liability for all loss or damage to and for failure to procure marine insurance on cargo laden on board said vessel regardless of fault, and that the policies of insurance issued by the intervening petitioners herein were paid for by and in respect to securing cargo insurance were primarily issued for the benefit of owners, shippers and consignees of cargo laden on board the Steamer George D. Dixon, and that said intervening petitioners, by reason of payments heretofore made and to be made on account of such cargo loss and damage, are entitled to be subrogated to the rights of such owners, shippers and consignees of cargo laden on board the Steamer George D. Dixon for the recovery of full indemnity thereon, and are entitled to enforce the liability of the Steamer Willis L. King and of the Steamer George D. Dixon each for a moiety of the cargo loss and damage, so to thereby provide full recompense to said intervening petitioners for the amounts paid and to be paid by them; and the parties having agreed to a reference for the assessment of damages, it is hereby

Ordered, Adjudged and Decred that said vessels Willis L. King and George D. Dixon be, and they hereby are, both held at fault for the collision set forth in said pleadings, and all resulting damages are hereby divided equally between their respective owners, the Interstate Steamship Company and Great Lakes Transit Corporation, all costs to be borne equally between said parties; and it is hereby further

Ordered, Adjudged and Decreed that under and by reason of the various contracts of carriage between Great Lakes Transit Corporation and shippers, owners and consignees of cargo laden on board the Steamer George D. Dixon, Great Lakes Transit Corporation assumed and became liable to pay for all losses and damages sustained by [fol. 322] and in respect of such cargo, including general average charges and expenses of a similar nature, resulting from said collision, such liability being regardless of fault or negligence on the part of or attributable to Great Lakes Transit Corporation; that Atlantic Mutual Insurance Company and other similarly situated underwriters intervening herein, issued similar policies of insurance aggregating the sum of $1,100,000.00, at the request of said Great Lakes Transit Corporation, which said policies of insurance were paid for by and were primarily for the benefit of and to indemnify owners, shippers and consignees of cargo laden upon the Steamer George D. Dixon and upon other vessels owned and operated by Great Lakes Transit Corporation against loss or damage sustained by such cargo while water-borne on said vessels of Great Lakes Transit Corporation; that to the extent of payments heretofore made by said Atlantic Mutual Insurance Company and other similarly situated underwriters, or made by said intervening underwriters at any time prior to entry of final decree, in settlement and payment of proper claims of owners, shippers and consignees of cargo laden on board the Steamer George D. Dixon on account of loss or damage to such cargo arising out of said collision, and on account of general average charges and expenses of a similar nature, said Atlantic Mutual Insurance Company and other similarly situated intervening underwriters are entitled to be, and are, subrogated to all rights of owners, shippers and consignees of cargo laden on board the Steamer George D. Dixon for loss or damage to such cargo arising out of said collision; and it is hereby further

Ordered, Adjudged and Decreed that Atlantic Mutual Insurance Company and other similarly situated underwriters intervening herein recover a moiety of the amount of payments made and to be made prior to entry of final decree herein for the benefit of owners, shippers and consignees of cargo laden on board the Steamer George D. Dixon of and from the Steamer Willis L. King, her engines,

etc., and her owner Interstate Steamship Company, and a moiety thereof of and from the Steamer George D. Dixon, her engines, etc., and her owner Great Lakes Transit Corporation, with costs, and that any balance which said intervenors shall not be able to collect from or enforce against either of said vessels be paid by the other vessel to [fol. 323] the amount of its stipulation for value, and that said vessels and their stipulators be condemned therefor; and it is hereby further

Ordered, Adjudged and Decreed that with respect to any balance of damages sustained by owners, shippers and consignees of cargo laden on board the Steamer George D. Dixon at the time of said collision, and resulting therefrom, not paid by Atlantic Mutual Insurance Company and other similarly situated underwriters intervening herein, at the time of entry of final decree herein, if there be such balance, the Great Lakes Transit Corporation as bailee and trustee for such cargo owners, shippers and consignees, shall recover a moiety of such balance of and from the Steamer Willis L. King, her engines, etc., and her owner Interstate Steamship Company, and a moiety of any such balance of and from the Steamer George D. Dixon, her engines, etc., and her owner Great Lakes Transit Corporation, individually and that any balance which such bailee shall not be able to collect from or enforce against either of said vessels be paid by the other vessel to the amount of its stipulation for value, and that said vessels and their stipulators be condemned therefor; and it is hereby further

Ordered, Adjudged and Decreed that intervening libelant, John Milko recover a moiety of the damages set forth in his intervening libel of and from the Steamer Willis L. King, her engines, etc., and her owner Interstate Steamship Company, and a moiety thereof of and from the Steamer George D. Dixon, her engines, etc., and her owner Great Lakes Transit Corporation individually, and that any balance which such intervening libelant shall not be able to collect from or enforce against either of said vessels be paid by the other vessel to the amount of its stipulation for value, and that said vessels and their stipulators be condemned therefor; and it is hereby further

Ordered, Adjudged and Decreed that the consolidated cause be referred to J. M. Shallenberger, Esq., of Cleveland, Ohio, as Special Master Commissioner, to determine and

report to the Court with all convenient speed, the amount of damages sustained by reason of said collision, including the amount of loss or damage sustained by cargo laden on board the Steamer George D. Dixon, and the amount of cargo's proportion of general average charges and ex-
[fol. 324] penses of a similar nature, and the amount paid and to be paid by Atlantic Mutual Insurance Company and other similarly situated intervening insurers and underwriters of cargo on account of such cargo loss and damage of cargo's proportion of general average charges and expenses, and also damages due to personal injuries suffered by John Milko, intervenor, provided, however, that in case an appeal be taken from this decree by any party within ten (10) days after entry and service thereof, all proceedings before the said Special Master Commissioner with respect to damages, except those with respect to damages of the said John Milko, shall be stayed until final determination of such appeal.

The parties having agreed thereto, it is

Ordered that the Court's opinions filed herein shall stand as the special findings of fact and conclusions of law required under Admiralty Rule 46½.

S. H. West, U. S. D. J.

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL, PROOF OF SERVICE, AND WAIVER OF CITATION, IN CASES NOS. 3168 AND 3170—Filed August 8, 1934

SIRS:

Please take notice that Great Lakes Transit Corporation, libellant, respondent and impleaded respondent in the above-entitled consolidated causes, hereby appeals to the United States Circuit Court of Appeals for the Sixth Cir-
[fol. 325] cuit from the interlocutory decree entered herein on the 27th day of July, 1934, and from each and every part of said decree.

Dated August 6, 1934.

Yours, etc., Brown, Ely & Richards, 1317 Chamber of Commerce Bldg., Buffalo, N. Y., Proctors for Great Lakes Transit Corporation.

To F. J. Denzler, Clerk of the Court; Duncan, Leckie, McCreary, Schlitz & Hinslea, Proctors for Interstate Steamship Company and Steamer "Willis L. King"; Sanders, Hamilton, Dudley & Connelly, Proctors for Intervening Libellant, John Milko; Stanley & Gidley and Robinson & Bleecker, Proctors for Atlantic Mutual Insurance Company and other intervening underwriters.

Waiver and Appearance

Due service of a copy of the foregoing notice of appeal is hereby acknowledged, together with a copy of assignment of errors. The issuance and service of a citation is hereby waived, and acceptance and appearance hereby entered.

Dated this 7th day of August, 1934.

Duncan, Leckie, McCreary, Schlitz & Hinslea, Proctors for Interstate Steamship Company and Steamer "Willis L. King"; Sanders, Hamilton, Dudley & Connelly, Proctors for Intervening Libellant, John Milko; Stanley & Gidley, Proctors for Atlantic Mutual Insurance Company and other Intervening Underwriters.

[fol. 326] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL, IN CASES NOS. 3168 AND 3170—Filed August 8, 1934

Now comes Great Lakes Transit Corporation, named in the above entitled consolidated causes as libellant, respondent and impleaded respondent, and feeling itself aggrieved by the interlocutory decree herein entered on July 27, 1934 finding that the collision and the damage referred to in the pleadings and proof were occasioned by the mutual fault of the vessels Willis L. King and George D. Dixon, decreeing that such damages be equally divided between Interstate Steamship Company and Great Lakes Transit Corporation, and further decreeing that Atlantic Mutual Insurance Company and other similarly situated underwriters issued policies of insurance which were primarily for the benefit of and to indemnify owners, shippers and consignees of cargo laden upon the said Steamer George D. Dixon, that to the extent of payments made by said Atlantic Mutual Insurance

Company and other similarly situated underwriters in settlement and payment of proper claims of owners, shippers and consignees of cargo laden on board the Steamer George D. Dixon on account of loss or damage to such cargo arising out of said collision and on account of general average charges and expenses of a similar nature, said Atlantic Mutual Insurance Company and other similarly situated intervening underwriters are entitled to be and are subrogated to all rights of such owners, shippers and consignees of cargo for loss or damage to such cargo arising out of said collision, and further decreeing that said Atlantic Mutual Insurance Company recover a moiety of such payments from the Steamer Willis L. King and owner, the Interstate Steamship Company, and the other moiety thereof from the Steamer George D. Dixon and owner, the Great Lakes Transit Corporation, with costs, and that any balance which said intervenors shall not be able to collect from or enforce against either of said vessels be paid by the other vessel to the amount of its stipulation for value, and that said vessels and their stipulators be condemned therefor, and further decreeing that in respect to any balance of damages so sustained by owners, shippers and consignees of cargo laden on board the said Steamer George D. Dixon not paid by Atlantic Mutual Insurance Company and other similarly [fol. 327] situated underwriters, Great Lakes Transit Corporation as bailee and trustee of such cargo owners, shippers and consignees, recover a moiety of such balance of and from the Steamer Willis L. King and her owner, Interstate Steamship Company, and the moiety of any such balance of and from the Steamer George D. Dixon and her owner, Great Lakes Transit Corporation, and that any balance which such bailee shall not be able to collect from or enforce against either of said vessels be paid by the other vessel to the amount of its stipulation for value, and further decreeing that intervening libellant, John Milko, recover a moiety of the damages set forth in his intervening libel of and from the Steamer Willis L. King and her owner, Interstate Steamship Company, and a moiety of and from the Steamer George D. Dixon and her owner, Great Lakes Transit Corporation, and any balance which such intervening libellant shall not be able to collect from or enforce against either of said vessels be paid by the other vessel to the amount of its stipulation for value, and further decree-

ing that the consolidated cause be referred to J. M. Shallenberger, Esq., of Cleveland, Ohio, as Special Master Commissioner to determine and report to the Court the amount of damages sustained by reason of said collision.

Said Great Lakes Transit Corporation does hereby claim an appeal from said interlocutory decree and each and every part thereof, to the United States Circuit Court of Appeals for the Sixth Circuit, and prays that said appeal may be allowed, and does hereby present its assignment of errors and prays that the above entitled consolidated causes may be certified to the said Circuit Court of Appeals for the Sixth Circuit, and that this Court may fix the amount of bond to be given by said appellant on appeal.

Great Lakes Transit Corporation, by Brown, Ely & Richards, Its Proctors.

[fol. 328] In United States District Court

Assignments of Error, in Cases Nos. 3168 and 3170—Filed August 8, 1930

Now comes Great Lakes Transit Corporation, named hereinabove as Respondent, Libellant and Impleaded Respondent, by its proctors Brown, Ely & Richards, and says, that in the record and proceedings in the above-entitled consolidated causes, the District Court, in its opinions, decisions, and in its interlocutory decree entered herein on or about the 27th day of July, 1934, erred:

First. In holding that the Steamer "George D. Dixon" was at fault for the collision between the Steamer "Willis L. King" and the Steamer "George D. Dixon," referred to in the pleadings and proofs herein.

Second. In failing to hold the Steamer Willis L. King solely at fault for the collision between the Steamer Willis L. King and the Steamer George D. Dixon, referred to in the pleadings and proofs herein.

Third. In that it ordered, adjudged and decreed that the vessels Willis L. King and George D. Dixon be both held at fault for the collision set forth in the pleadings herein, and that all resulting damages be divided equally between their respective owners, the Interstate Steamship Company and

Great Lakes Transit Corporation, with all costs to be borne equally between said parties.

Fourth. In failing to hold and decree that the Steamer George D. Dixon and Great Lakes Transit Corporation were free from fault for the collision referred to in the pleadings and proofs herein.

Fifth. In holding that the Steamer Dixon was negligent and at fault for porting her helm further after the second one-blast passing signal was sounded by the Steamer Willis L. King.

Sixth. In holding that upon hearing the second one-blast passing signal blown by the Steamer King, Captain Goodberry, master of the Steamer George D. Dixon, "should have appreciated that the approaching vessel was being very badly navigated or was laboring under some serious misunderstanding and that there was risk of collision unless the Dixon took prompt steps to prevent it."

[fol. 329] Seventh. In holding that upon the second one-blast passing signal from the Steamer Willis L. King, the master of the Steamer George D. Dixon should have sounded alarms and stopped her headway.

Eighth. In holding that if the George D. Dixon had sounded alarms and stopped her headway upon hearing the second one-blast passing signal from the Steamer Willis L. King, the collision would have been averted.

Ninth. In failing to hold that the repetition of the one-blast passing signals by the Steamer Willis L. King left no room for doubt as to the course and intention of the Steamer Willis L. King, and that it was the obligation and duty of the Steamer George D. Dixon to continue her course to starboard under a port helm.

Tenth. In holding the Steamer George D. Dixon at fault for continuing her course to starboard under a further port helm on the second one-blast passing signal from the "King," when in fact there was no doubt in the mind of the master of the Steamer George D. Dixon as to the course or intention of the Steamer Willis L. King.

Eleventh. In failing to hold that the Steamer George D. Dixon was navigated in compliance with the laws and rules

enacted and adopted for the prevention of collisions upon the Great Lakes.

Twelfth. In failing to hold that the navigation of the Steamer Willis L. King was so reckless and her faults so gross and inescapable that a presumption adverse to claim or claims of fault on the part of the George D. Dixon arose, so that any reasonable doubts as to the propriety of the navigation of the Steamer George D. Dixon should be resolved in her favor.

Thirteenth. In failing to hold and decree that the libel of Interstate Steamship Company against Great Lakes Transit Corporation should be dismissed with costs.

Fourteenth. In failing to hold and decree that the petition of Interstate Steamship Company under the 56th Admiralty Rule, to bring in Great Lakes Transit Corporation, owner of the Steamer George D. Dixon, as carrier and/or bailee of cargo, to answer cargo claim should be dismissed.

Fifteenth. In failing to hold and decree that petition of Interstate Steamship Company, under Rule 56 of the Supreme Court, to bring in the Great Lakes Transit Corpora- [fol. 330] tion to answer the intervening libel of John Milko, should be dismissed.

Sixteenth. In that it ordered, adjudged and decreed that Intervening Libellant John Milko recover a moiety of his damages of and from the Steamer George D. Dixon, her engines, etc., and her owner Great Lakes Transit Corporation, individually.

Seventeenth. In failing to hold and decree that the Intervening Libellant John Milko recover his damages solely from the Steamer Willis L. King, her engines, etc., and her owner, Interstate Steamship Company.

Eighteenth. In failing to hold and decree that Great Lakes Transit Corporation as owner of the Steamer George D. Dixon, recover all of the damages sustained by it on account of and arising out of the collision between the Steamer George D. Dixon and the Steamer Willis L. King, referred to in the pleadings and proofs, from the Steamer Willis L. King, her engines, etc., and Respondent Interstate Steamship Company, her owner.

Nineteenth. In holding that the interlocutory decree must be in favor of the owner of the Steamer George D. Dixon as bailee and trustee for cargo owners, and run against Great Lakes Transit Corporation individually and against the owner of the Steamer Willis L. King for a moiety of the damages against each; and in failing in connection therewith, to consider and give effect to payments to cargo owners made and to be made by Great Lakes Transit Corporation from its own funds, in settlement of claims of cargo owners made against it and in extinguishment of rights and interests of such cargo owners.

Twentieth. In holding that intervening underwriters have paid and will pay the amount of cargo loss to Great Lakes Transit Corporation as bailee and trustee for cargo owners.

Twenty-first. In holding intervening underwriters are entitled to be subrogated to rights of such owners of cargo, as against Great Lakes Transit Corporation.

Twenty-second. In holding intervening underwriters are entitled to enforce the liability of the Steamer George D. Dixon for a moiety of the cargo loss.

Twenty-third. In holding the law, in view of the finding of mutual fault, requires that intervening underwriters recover back the full amount of their outlays.

[fol. 331] Twenty-fourth. In holding the policies of insurance issued by intervening underwriters were paid for by cargo owners.

Twenty-fifth. In holding such policies of insurance, "in respect to securing cargo insurance" were primarily for the benefit of cargo owners.

Twenty-sixth. In holding cargo owners are the real beneficiaries of such insurance.

Twenty-seventh. In holding Great Lakes Transit Corporation assumed to shippers an obligation to provide marine insurance on such cargo.

Twenty-eighth. In holding shippers had an insurable interest in the policies of insurance issued by intervening underwriters, respecting the legal liability of the Great

Lakes Transit Corporation arising from its failure to procure marine insurance on their goods.

Twenty-ninth. In holding shippers are the real beneficiaries of such policies in so far as concerns such last mentioned liability.

Thirtieth. In holding the rights of the parties were not affected by payment by Great Lakes Transit Corporation of the cargo losses out of its own moneys.

Thirty-first. In holding such payments were made on the theory Great Lakes Transit Corporation might thus deny the underwriters' subrogation.

Thirty-second. In holding denial of underwriters' alleged right of subrogation would allow Great Lakes Transit Corporation to profit by its own wrong.

Thirty-third. In holding the doctrine of Wager v. Providence & Washn. Ins. Co. (150 U. S. 99) has no application to the present case.

Thirty-fourth. In holding that underwriters are entitled to be and are subrogated to the rights of such owners, shippers and consignees of cargo laden on board the Steamer George D. Dixon for the recovery of full indemnity thereon and are entitled to enforce liability of the Steamer George D. Dixon so as to thereby provide full recompense to said intervening underwriters for the amounts paid and to be paid by them.

Thirty-fifth. *In adjudging and decreeing* that Atlantic Mutual Insurance Company and other similarly situated underwriters intervening herein recover a moiety of the amount of payments made and to be made by them for the [fol. 332] benefit of owners, shippers and consignees of such cargo, from the Steamer George D. Dixon and owner, with costs.

Thirty-sixth. In decreeing that any balance which said intervening underwriters shall not be able to collect from or enforce against the Steamer Willis L. King be paid by the Steamer George D. Dixon to the amount of its stipulation for value.

Thirty-seventh. In adjudging and decreeing that with respect to any balance of damages sustained by owners,

shippers and consignees of such cargo, Great Lakes Transit Corporation as bailee and trustee of owners, shippers and consignees of cargo, recover a moiety thereof from the Steamer George D. Dixon and from Great Lakes Transit Corporation individually.

Thirty-eighth. In holding that any balance of said last mentioned sum which Great Lakes Transit Corporation as such bailee shall not be able to collect from or enforce against the Steamer Willis L. King be paid by the Steamer George D. Dixon to the amount of its stipulation for value.

Thirty-ninth. In failing to make provision in the said decree for the recovery by Great Lakes Transit Corporation of amounts paid by it in settlement and discharge of such cargo claims, to the extent of the deductible average specified in the said policies of insurance.

Fortieth. In failing to make any provision whatsoever in said decree for the reimbursement by intervening underwriters of their proper proportion of the costs and expenses of Great Lakes Transit Corporation in commencing and maintaining this suit; and in failing to hold that intervening underwriters should reimburse Great Lakes Transit Corporation therefor.

Forty-first. In failing to hold that to the extent and by reason of payments made by them under said policies of insurance to Great Lakes Transit Corporation, intervening underwriters were entitled to become subrogated to only the rights of Great Lakes Transit Corporation individually.

Forty-second. In failing to hold that intervention by said underwriters herein should be permitted only if and to the extent that such intervention shall not prejudice or affect the rights of Great Lakes Transit Corporation as against the Steamer Willis L. King or owner, or under the said policies of insurance.

[fol. 333] Forty-third. With respect to the holding of the Court that Great Lakes Transit Corporation is liable for failure to procure marine insurance on cargo, the Court further erred in determining an issue not raised by any pleading or proof in the causes or in any other way presented to the Court for decision herein.

Forty-fourth. With respect to decreeing that intervening underwriters recover from the Steamer George D. Dixon

and Great Lakes Transit Corporation a moiety of the payments made by underwriters on account of cargo losses, the District Court further erred in granting relief not prayed for by the intervening petition of underwriters or any other pleadings in the case, and not warranted by the proofs, and in failing to hold that the only issues raised by the pleadings of intervening underwriters and by the proofs in connection therewith were in respect of rights of such underwriters as against the non-carrying vessel.

Dated August 6, 1934.

Brown, Ely & Richards, Proctors for Great Lakes Transit Corporation, Respondent, Libellant and Impleaded Respondent.

In United States District Court

Order Allowing Appeal in Cases Nos. 3168 and 3170

(Entered August 8, 1934, by Paul Jones, Judge)

The petition of Great Lakes Transit Corporation, named in the above entitled consolidated causes as libellant, respondent and impleaded respondent, praying the allowance of appeal therein to the United States Circuit Court of Appeals for the Sixth Circuit, having been filed herein, and it appearing to the Court that the said libellant, respondent and impleaded respondent has filed its assignment of errors as required by the rules of the United States Circuit Court of Appeals for the Sixth Circuit, it is hereby

[fols. 334-346] Ordered, that said appeal be and the same hereby is allowed as prayed for, and the amount of the bond to be given on said appeal is fixed at Five Hundred Dollars ($500.00) and it is further

Ordered, that hereafter, in accordance with the rules governing the taking of such an appeal, a transcript of the record and proceedings herein, duly certified, be transmitted to the United States Circuit Court of Appeals for the Sixth Circuit, and it is further

Ordered, that all proceedings, with respect to damages before the Special Master Commissioner designated in the said interlocutory decree, except those with respect to damages of the said John Milko, shall be stayed until final determination of such appeal.

[fol. 347] In United States Circuit Court of Appeals for the Sixth Circuit

Cause Argued and Submitted

(February 11, 1936—Before Hicks, Simons and Allen, JJ.)

This cause is argued by J. B. Richards and D. S. Jackson for appellant and by T. H. Garry and Ray M. Stanley for appellees and is submitted to the court.

In United States Circuit Court of Appeals

Decree—Filed June 5, 1936

Appeal from the District Court of the United States for the Northern District of Ohio

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Ohio, and was argued by counsel.

On Consideration Whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause be and the same is hereby affirmed.

[fol. 348] In United States Circuit Court of Appeals

Opinion—Filed June 5, 1936

Before Hicks, Simons and Allen, Circuit Judges

Hicks, Circuit Judge:

Interstate Steamship Company, owner of the Steamer "Willis L. King," brought suit against Great Lakes Transit Corporation, owner of the Steamer "George D. Dixon," for $46,864.35, damages for negligence leading to a collision between the two steamers in the St. Clair River.

The Transit Corporation denied that the Dixon was negligent and brought a counterclaim against the King and its owner for $120,000.00 on behalf of itself and as bailee of the damaged cargo. The Interstate Company then impleaded the Transit Corporation as the owner of the Dixon under the 56th Admiralty Rule to answer the cargo claim in the second case. John Milko, a seaman on the Dixon, who was injured, intervened in the second suit.

The court heard the cases as a consolidated cause, found that the collision resulted from the fault of both vessels, divided the damages and costs and appointed a Special Master Commissioner to determine and report the amount of damages sustained, including damages to the owner of the Dixon as bailee of cargo, and damages for personal injuries to Milko. While the cause was pending before the Master Commissioner, the Atlantic Mutual Insurance Company filed an intervening petition as insurer and underwriter of the cargo of the Dixon against the King and the Interstate Company and sought a decree for $6,401.57, the amount it had paid for damages to cargo, and for further undetermined sums for which it was liable. It was stipulated that this petition should for all purposes stand as an intervening petition of fourteen other underwriters which had issued insurance aggregating $1,100,000.00 under similar policy conditions. The Transit Corporation and the Interstate Company filed answers and the facts were stipulated for the purpose of permitting the court to pass upon the rights of the intervening underwriters.

The Court found that the cargo owners were the beneficiaries of the insurance and entered an interlocutory decree against each vessel and its owners for a moiety of the damages sustained by cargo on the Dixon, with provision for recovery from either of any deficiency not collectible from the other, and directed the Master Com-
[fol. 349] missioner to determine and report the amount of the cargo damage.

The Transit Corporation appealed. It complains of the findings that the Dixon as well as the King was at fault; that the insurance was taken out to protect the cargo owners; and that it must therefore pay a moiety of the cargo damages.

On August 11, 1933, at 4:53 P. M., the King (580 feet long, 58 feet beam, 32 feet deep and drawing about 18½ feet) passed Port Gratiot light ship at the foot of Lake Huron and entered the St. Clair River, bound down the lakes with a cargo of ore. The course of the river at its source was slightly west of south, then slightly east of south, and at its junction with the Black River in Port Huron veered again to slightly west of south. The current at this point was about two miles per hour and toward the Canadian shore.

At the same time the steamer Dixon (350 feet long, 46 feet beam, and 30 feet deep and drawing 10 feet forward and 16 feet aft) was proceeding up the river below Port Huron, bound with a cargo of package merchandise from Buffalo to Milwaukee.

The point of collision, as fixed by both captains, was approximately a mile below the mouth of the Black River and slightly east of the middle of the river upon the Canadian side of the International Boundary. It is more definitely located as slightly below the Canadian docks of the Imperial Oil Company.

Capt. Watts of the King testified that when he passed the traffic buoy just about the mouth of the Black River, which marked the separation of routes for upbound and downbound traffic, his engine was going full speed; that this would give the King a speed of 11½ miles per hour in deep water and that although the shallow water of the river would retard it somewhat, still, with the aid of the current his boat was making more than 9 miles per hour.

Bulletin No. 42, Survey of Northern and Northwestern Lakes, issued by the War Department Corps of Engineers, in April, 1933, promulgated two rules for the navigation of this part of the St. Clair:

"Rule 1. All downbound vessels navigate the American channel. All upbound vessels shall navigate the Canadian channel. • • •"

[fol. 350] "Rule 2. The speed of vessels navigating these channels shall not exceed 9 miles per hour."

Watts testified that just below the Black River the weather, which had been clear, set in with a violent rain squall and wind, and that just then he heard a fog signal of a vessel down the river and that he immediately blew a fog signal of three blasts and checked to half speed; that visibility was reduced to 900 or 1000 feet and appeared to be worse further down the river, though both banks were visible at all times.

He further testified that he heard only one fog signal and that he blew a two blast passing signal, indicating that he was directing his course to port (the Canadian side), and calling for a starboard passing; that thirty or forty seconds later he blew a second two blast signal and received no answer but that the Dixon then became visible 1200 to

1500 feet away on his starboard bow and in alignment for a starboard to starboard passing.

Watts further testified that he was on the Canadian side of the river and about 500 feet offshore, with his course trained on the Mueller plant (Canadian), about 1½ miles away, when he blew a third two blast whistle, after which the Dixon moved to its starboard and across the King's bow. Both the first mate and the wheelman of the King testified that the King blew three two blast passing signals. The watchman testified that he heard at least two two blast passing signals. The mate heard no fog signal from either vessel. None of the King's crew testified to hearing any signal from the Dixon other than the first fog signal.

Watts testified that because of the storm and low visibility he went to the Canadian side in order to turn and anchor on the American side. As soon as the Dixon was seen to move to starboard the King backed full speed, blew a danger signal and a two blast passing signal, but the Dixon kept coming across her bow and the King's bow struck the Dixon at a point about 143 feet from her stem on her port side. The weight of the evidence is that the collision took place about 5:40 P. M. The Dixon continued across the King's bow to the Canadian shore and the King kept backing in order to stand by if needed.

Capt. Goodberry of the Dixon testified that when he was about a half mile below Reed's Dry Dock (marked "R" [fol. 351] on appellant's Exhibit A and shown on libellant's Exhibit I as the lagoon) and slightly on the Canadian side, he saw a cloud coming from the west and that it began to rain; that he immediately ordered the speed checked so that when he passed the dock he was going about two miles per hour or one-half mile faster than steerage way.

The engineer, assistant engineer and oiler of the Dixon testified that her engines were checked before the collision. Their estimates of the intervening time varied from eight to fourteen minutes. The engineer's log showed the check at 5:25. Goodberry testified that he blew the first fog signal a couple of minutes after the check; that visibility was cut down but that he could always see the Canadian shore; that when he was about opposite Reed's Dry Dock he heard an answer upstream and then blew a second fog signal; that right after that he heard a one blast signal (for a port to port passing) from up the river, which he answered and

ported half a point. He then blew another fog signal and heard a second one blast signal ahead which he answered, after which he ported a point. He then blew another fog signal which was answered by a third one blast signal. He answered with one and told the wheelman to port again and "keep her coming." The rain and fog lasted three or four minutes and was nearly over when he saw the King. The next thing he heard was five short whistles and he looked and saw the King's light on his port side and about 400 feet from the Canadian shore and almost abeam. He testified that the King then gave two whistles and came out of the fog not more than 400 or 500 feet away, but seeing that there was no chance of "giving him what he asked for" (a starboard to starboard passing) he blew one whistle and called out "hard aport." He testified that while he was thus headed for the Canadian shore the King came down the river pretty well over on the Canadian side, and struck the Dixon on her port side, at right angles; that the Dixon then ran full speed ahead, then reversed, checked, and anchored on the Canadian side.

Coffield, the mate of the Dixon, and Lemke, who was on watch, confirmed in every particular Goodberry's account of the whistles of both ships and their sequence.

Dr. Francois, an outside witness, testified for the King. He testified that he was on the point of the Foundation Com- [fol. 352] pany's slip, 20 or 25 feet north of the Steamer Spokane, which was moored there. This was near Reed's Dry Dock. He testified that he saw the Dixon, as the storm came on, just east of midstream, and that it was going 12 to 14 miles an hour; that it blew one blast and disappeared into the storm; that he then heard a three blast fog signal and then another three blast signal which seemed to be from different whistles.

Capt. Geel, who was master and mate on the ferries running between Port Huron and Sarnia on the Canadian side, testified that he saw the Dixon pass his home in Port Huron and heard her blow her fog whistle and a one blast passing signal three times soon after the storm struck the locality.

Capt. Conlin, a master of 26 years' experience and in charge of barge repairing at the Wolverine Dry Dock, on the American side, a short distance north of the point of collision, testified that he left the dock about 5:30 and was driven north in an automobile; that the occupants of the car

were caught in the storm and stopped for a few minutes, at which time he heard a chime whistle blow one blast; that after the weather cleared a little he drove on and again heard a chime whistle answered by a coarser whistle; that soon after he left the car and while he was standing under an awning about a mile north of the Wolverine dock, and about ten minutes after hearing the first whistle, he heard a chime whistle blow five or more blasts down the river. It is undisputed that the King had a chime whistle and the Dixon a coarser one.

Ernest Brewer, caretaker of the Spokane, testified that he heard a one blast signal from the King, answered by the Dixon. There were other witnesses for appellant, sailors on the Dixon, who confirmed the testimony that one blast passing signals were exchanged at least twice before the collision. These men also spoke of a two blast signal from the King just before the accident.

We cannot accept the evidence of the King that the Dixon blew only one fog signal. There is every reason to believe that she not only blew several fog signals but also answering blasts to the King's passing signals. The weight of the evidence undoubtedly is that the course of the King was towards the Canadian side even though blowing one blast [fol. 353] signals, and no reason occurs to us why the King should not have heard the signals from the Dixon.

Capt. Watts' statement that he went to the Canadian side to turn his vessel is not convincing. There seems to have been no sufficient reason for that maneuver.

The court found that the King was at fault in not blowing an alarm and reducing speed when it found itself on the Canadian side in the neighborhood of another vessel which it could not see, in violation of Rules 15 and 26 (Pilot rules for the Great Lakes and other connecting and tributory waters) which prescribed that a steamer shall on hearing the fog signal of another vessel, apparently not more than four points from right ahead, reduce her speed to bare steerage way. We are in agreement but would lay additional emphasis on the King's speed in excess of nine miles an hour in violation of Rule 2 for navigation of this part of the river.

As to the negligence of the Dixon: Lemke, the lookout, standing watch on its forecastle head, testified that after the second one blast from the King, he reported to the cap-

tain a ship about a half point off the starboard bow, having seen the flash of its diamond light. He again saw this flash after the third one blast signal from the King. The light had then swung to the port side of the Dixon and he so reported it, but the Dixon was then porting heavily, was swinging across stream and was losing speed, and it might have apprehended from the position of the King's light that, even though it was then on the port side, the King was not in position to pass safely, as of course it was not. It was after this third one blast signal from the King that Goodberry ordered his wheelman "to port again and keep her coming." The Dixon could not, we think, absolve itself from blame by acting on the second one blast signal from the King, when, in so doing, it is clear she ignored information of a contradictory nature—the first flash of the light.

Granting that the King was being very badly navigated, still there is the testimony of the Dixon's own witnesses that this fact was brought home to the Dixon after the King's second one blast passing signal, her flash showing her still to be on the Dixon's starboard.

Pilot Rule II and Navigation Rule 26 would seem to bear on such a situation. The first reads in part:

"Rule II. If, when steamers are approaching each other, the pilot of either vessel fails to understand the course or [fol. 354] intention of the other, whether from signals being given or answered erroneously or from other causes, the pilot so in doubt shall immediately signify the same by giving the danger signal of five or more short and rapid blasts of the whistle; and if both vessels shall have approached within half a mile of each other, both shall be immediately slowed to a speed barely sufficient for steerageway, and, if necessary, stopped and reversed, until the proper signals are given, answered and understood, or until the vessels shall have passed each other."

And the second:

"Rule 26. If the pilot of a steam vessel to which a passing signal is sounded deems it unsafe to accept and assent to said signal, he shall not sound a cross signal; but in that case, and in every case where the pilot of one steamer fails to understand the course or intention of an approach-

ing steamer, whether from signals being given or answered erroneously, or from other causes, the pilot of such steamer so receiving the first passing signal, or the pilot so in doubt, shall sound several short and rapid blasts of the whistle; and if the vessels shall have approached within half a mile of each other both shall reduce their speed to bare steerageway, and, if necessary, stop and reverse."

It seems reasonably certain that the Dixon was going very slowly at the time of the collision. But it is also clear that Capt. Goodberry was in possession of information, or should have been, that should have raised doubts in his mind as to the intention of the King, namely, the knowledge that the King was still on his starboard bow, even after the second port to port passing signal. Had he observed either rule quoted above, he might not have averted the collision but a danger signal would have put the king on its guard. He could not forego any precaution on his part simply because the King was being badly navigated. The failure to blow a danger signal in the face of the King's palpable confusion in blowing a second port to port passing signal when it was still in line for a starboard passing, was negligence. [fol. 355] Pittsburgh S. S. Co. v. Duluth S. S. Co., 222 Fed. 834, 835 (C. C. A. 6); Hawgood Transit Co. v. Mesaba S. S. Co., 166 Fed. 697, 701 (C. C. A. 6). See The North Star, 62 Fed. 71 (C. C. A. 6); The San Simeon, 63 Fed. (2d) 798 (C. C. A. 2); The George W. Roby, 111 Fed. 601 (C. C. A. 6). We think the court correctly found both vessels at fault.

As to the second question, i. e., whether the cargo insurance was payable to the owners of the Dixon as carrier, or as bailee or trustee of the cargo for the owners:

The gist of the Transit Corporation's answer to the intervening petition was, that the policies of insurance were intended to, and did, insure and indemnify it against liability assumed by it to cargo owners for loss or damage, and that though the insurers had the cargo owner's right by subrogation against the King for a moiety there was no such subrogation against the Transit Corporation, since it was this very type of loss against which the insurers had agreed to indemnify it.

The King in its answer asked that its rights be preserved and that a decree be entered, showing that the King and

the Dixon were mutually at fault and dividing the damages and costs equally between the owners of the steamers.

In the absence of legislation, the Dixon's liability to cargo owners was absolute, being equivalent to that of an insurer. The Maggie Hammond, 9 Wall., 435, 444. This liability was modified by the Harter Act (46 U. S. C., §§ 190-195) but under § 9e of the Uniform Bill of Lading, approved by the Interstate Commerce Commission, and here used by the shippers and the Dixon, the saving clauses of the Harter Act might be waived or modified if the property was carried under a tariff which provided that the carrier should be liable for loss from perils of the sea.

Without going into a detailed analysis of the eleven tariff schedules under which the Dixon's cargo was carried, it seems clear that each of them was so worded as to waive the provisions of the Harter Act. These tariff schedules fall into three classes: in the first class, under the heading "Marine Insurance" are the words "Rates Named Herein Include Marine Insurance" and then follows:

"Rule No. 15. While shipments subject to rates named herein as including marine insurance are water borne at and [fol. 356] between lake ports on the vessels of the Great Lakes Transit Corporation, said corporation assumes liability for loss or damage to said shipments caused by marine perils, to-wit—of the seas, and lakes, fire, collision, etc."

In the second class, subdivided into two, under the headings, "Governing Marine Insurance on Rail and Lake Traffic" and "Marine Insurance," there was a specific assumption of liability (as above) but no express statement that rates include marine insurance.

In the third class the schedules contain the statement that "rates named in this tariff include marine insurance while in the possession of the Great Lakes Transit Corporation, or other named lake steamers" and then the provision—

"Liability of Carriers When Rates Include Marine Insurance. Property moving under rates named or provided for in this tariff while in the custody of the water carriers from the time they receive it • • • is insured: While water borne against the perils of the seas • • • collisions • • •"

These were the terms and conditions upon which appellant agreed to carry cargo and the owners would naturally con-

clude that their property was to be covered by policies of marine insurance (The Grecian, 8 Fed. Supp., 580, 582—D. C.) and we think the policies in suit were procured by appellant in compliance with its contracts and were issued primarily for the benefit of cargo owners.

It is true that in the opening paragraph of the policies appellant is the nominal insured but there follows the significant words "for account of whom it may concern;" then the phrase "loss to be paid • • • to Great Lakes Transit Corporation or order."

For the effect of these and similar phrases see Buck v. Chesapeake Ins. Co., 1 Pet., 114, 121; Munich Assur. Co. v. Dodwell & Co., 128 Fed. 410, 414 (C. C. A. 9); Symmers v. Carroll, 207 N. Y., 632, 637; Virginia-Carolina Chemical Co. v. Chesapeake L. & T. Co., 279 Fed. 684 (C. C. A. 2).

Then follows the coverage, described as—"On First Interest as per form attached." This form repeats the phrase, "for account of whom it may concern" and continues, "loss, [fol. 357] if any, payable to Great Lakes Transit Corporation or order." The specific coverage is upon "any cargo per vessels sailing from initial port prior to December 12, 1933, midnight (Chicago time) until Great Lakes Transit Corporation's responsibility therefor ceases." The coverage continues; "On cargo of any kind owned by the assured and on the assured's liability to others in respect to cargo of any kind covering same from time said Great Lakes Transit Corporation becomes responsible therefor and until its responsibility ceases. • • •"

Again, the policy provides, "and also the insurance of said *cargo against perils of the seas and lakes;*" and further, "and for any and all claims which said *cargo may be called upon to contribute in general average.*" (Italics ours.)

The policy contains the following further provision:

"Liability under this policy for any loss or losses, claim or claims, arising in respect to each cargo while on board of each the above named steamers and/or substituted steamers • • • including connecting water conveyances or in respect to cargo while on docks, wharves or elsewhere on shore as the result of any one occurrence is hereby limited • • •"

There is a provision covering damages to shipments in refrigerators and the usual standard "sue and labor" clause. It would also seem, as indicated by the District Judge, that the phrase "on the assured's liability to others in respect to cargo" would protect cargo owners against a breach of appellant's obligations to furnish marine insurance for which the owners had agreed to pay a higher rate.

Appellant relies upon the following clause found in each of the policies:

"The Assured" (the Transit Corporation) "taking upon themselves as to said cargo or parts thereof, * * * the insurance of said cargo against perils of the seas and lakes * * * and the said Assurers agree and undertake to indemnify * * * said Assured * * * to the extent to which the Assured may be held liable by the owners thereof under any liability the Assured shall have assumed as common carriers, insurers, or otherwise * * *"

[fols. 358-360] But this clause does not avail appellant because it did not take upon itself the insurance of cargo or assume any liability with reference thereto as an insurer. Its obligation as to insurance went no further than to require it to procure policies of insurance from others. We think the parties could not have failed to understand that these policies were issued primarily for the benefit of cargo and that the payments made and to be made by the underwriters were in settlement of their liability to cargo owners. It follows that, under general principles of equity, the underwriters were entitled by subrogation to all the rights of the cargo owners to recover the amounts paid. Liverpool & Great Western Steam Co. v. Phenix Ins. Co., 129 U. S. 397, 462; Mason v. Marine Ins. Co., 110 Fed. 452, 456 (C. C. A. 6); Federal Ins. Co. v. Detroit Fire & Marine Ins. Co., 202 Fed. 648, 651 (C. C. A. 6); and their claims may be prosecuted by intervention. Mason v. Marine Ins. Co., supra; Federal Ins. Co. v. Detroit, etc., Ins. Co., supra.

The court having, as we think properly, found that the collision was caused by both the King and the Dixon, there was no error in decreeing a recovery in behalf of the underwriters for a moiety of the payments made, and to be made, by them on account of loss to cargo, with the provision that any balance uncollectible from one should be paid by the other.

It is urged that there is no basis for such a decree against the Dixon because the intervening petitions of the underwriters sought relief against the King and its owners only. This objection is without merit for appellant treated the intervening petitions as a sufficient basis for relief and stipulated the facts for the express purpose of permitting the court to pass upon the rights of the intervening underwriters "in so far as concerns the form of interlocutory decree to be entered."

The decree is affirmed.

[fol. 361] In United States Circuit Court of Appeals

[Title omitted]

Petition for Rehearing—Filed July 3, 1936

To the Circuit Court of Appeals for the Sixth Circuit:

The petition of Great Lakes Transit Corporation respectfully shows:

That the opinion of this Court directing affirmance of the interlocutory decree of the District Court herein was filed on June 5, 1936, and it appears from such opinion:

(a) That in directing enforcement in favor of intervening underwriters of a liability of appellant for cargo loss, as common carrier, the Court has misconstrued and overlooked the portions of the insurance policy whereby these same underwriters expressly agree to indemnify appellant against all liability on its part, as a common carrier or otherwise, with respect to cargo losses.

(b) That the Court failed to give effect to a controlling decision of the Supreme Court of the United States (Wager vs. Providence Ins. Co., 150 U. S. 99).

[fol. 362] (c) That the Court misconstrued the question presented for decision and the stipulated facts in stating the question was "whether the cargo insurance was payable to the owners of the Dixon as carrier, or as bailee or trustee of the cargo for the owners", whereas the stipulated facts were that, as customary under such policies, the underwriters paid appellant to reimburse it for amounts it had paid, as carrier, for its own account.

That the grounds and reasons for this petition more fully appear in the brief annexed hereto, which your petitioner prays may be considered as a part of this application.

Wherefore, your petitioner prays that a rehearing may be granted to it in this cause, upon the issue as to the rights of the Atlantic Mutual Insurance Company and similarly situated underwriters.

Dated this 2nd day of July, 1936.

Great Lakes Transit Corporation, by Harry S. Noble, President.

State of New York,
County of Erie, ss:

Harry S. Noble, being duly sworn, deposes and says that he is an officer, to wit, the President of Great Lakes Transit Corporation, the petitioner above named; that he has read the foregoing petition and knows the contents thereof; that the said petition is presented in good faith and not for delay, and that deponent has fully and fairly stated to petitioner's counsel, John B. Richards and David S. Jackson, [fol. 363] the facts connected with the issues mentioned in said petition, and that the said application for rehearing is well founded as petitioner is advised by his said counsel; and verily believes.

Harry S. Noble.

Subscribed and sworn to before me this 2nd day of July, 1936. Harold K. Duchmann, Notary Public in and for Erie County, New York.

We hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay, and that in our opinion it is well founded.

John B. Richards, David S. Jackson, Counsel for Petitioner.

[fol. 364] [Title omitted]

Brief in Behalf of Appellant on Application for Rehearing

The following facts are admitted or have been found by the Court:

1. That the Great Lakes Transit Corporation as a common carrier by water, was with its Steamer Dixon transporting the cargo which was damaged.

2. That the Transit Corporation as such a common carrier by its tariff waived the saving clauses of the Harter Act, and its liability to cargo was "equivalent to that of an insurer." (Opinion p. 8.)

3. That by reason of its waiver of the Harter Act, under a finding of mutual fault the Transit Corporation became [fol. 365] directly liable to cargo owners for a moiety of damages to cargo and a moiety of the charges payable by cargo.

4. That the Transit Corporation was the named assured "for account of whom it may concern", and in every place in the policy of insurance in which the word "assured" is used, the Transit Corporation is meant, or at least included.

5. That during the years 1928 to 1933 inclusive, the Great Lakes Transit Corporation had carried general cargoes under bills of lading in the same form, and under policies issued by the Atlantic Mutual Insurance Company and other similarly situated underwriters in substantially the same form as those in evidence, and during said period like procedure had been followed as in this case, to wit: Cargo owners presented to the Transit Corporation their claims for damage arising out of perils of the sea, the Transit Corporation paid such claims and was reimbursed therefor by underwriters to the extent thereof less the deductible average provided in the policy (Stipulation of Facts, Rec. p. 267).

The Court has held that the policies were issued primarily for the benefit of cargo owners (Opinion p. 9). The question presented is not whether the policies were primarily for the benefit of cargo owners, but whether they were solely for their benefit, in other words, was this a single or a double coverage? Having in mind that the Transit Corporation paid $24,970.00 (Rec. 275) in premiums on $1,100,000.00 of insurance, waived the saving clauses of the Harter Act, and assumed a liability equivalent to that of an insurer with respect to every conceivable cargo loss, it would seem passing strange if it was uninsured with respect to its liability to cargo. The result of the decision of this Court is that notwithstanding its pay-

[fol. 366] ment of a premium of almost $25,000, since underwriters are subrogated to the rights of cargo owners they can recover from this responsible Transit Company every loss thus paid, and the policies are worthless pieces of paper. That the underwriters did not so construe the policies is shown by the fact that for five years the Atlantic Mutual Insurance Company and other intervening underwriters which had issued to the Transit Corporation policies in substantially the same form as the policy in the case at bar, have reimbursed the Transit Corporation for its payments to cargo owners shipping goods under bills of lading similar in form to those in the case at bar, for damage and expense arising out of perils of the sea, which includes collision, stranding and stress of weather, and a large number of other marine disasters, occasioned with or without negligence. Corpus Juris, Vol. 38, page 1098.

A moiety of the cargo damage was decreed against the Transit Corporation on account of its liability as a common carrier since, as this court states, the Transit Corporation having waived the saving clauses of the Harter Act its liability "was absolute, it being equivalent to that of an insurer" (Opinion p. 8).

That no refusal has ever been made by underwriters to reimburse the Transit Corporation on account of the liability which it has assumed with respect to cargo, and no attempt has ever been made to recover back payments thus made, is not strange since no words could possibly be chosen to more clearly express the agreement of underwriters to indemnify the Transit Corporation as a common carrier than the following policy provision which is quoted in part in the Court's opinion:

"The said Assurers" (Atlantic Mutual Insurance Co. et al.) "agree to indemnify said assured" (Great Lakes Transit Corporation) "to the extent to which the assured" [fol. 367] (Transit Corporation) "may be held liable under any liability the assured" (Transit Corporation) "shall have assumed as common carriers, insurers, or otherwise." (Rec. 277; Opinion p. 10.)

In order that there could be no possible contention that some liability to cargo owners had been assumed, which was not that of a common carrier, and in order that the coverage should be full and complete, after the words "common

carrier'' we find the words ''insurers, or otherwise,'' the underwriters thereby stating that no matter what liability is assumed, in so far as cargo loss is concerned, we, the underwriters, will reimburse you.

Although not in any way necessary to a decision, since the agreement of underwriters to indemnify the Transit Corporation against the liability which it assumed as a ''common carrier • • • or otherwise'' • • • suffices, we think the Court misconstrued the policy in rejecting appellant's claim that the underwriters are also liable under the portion of the clause whereby they assumed appellant's liability as an insurer. The policy is a contract between the Transit Corporation and the underwriters. It states that it is agreed that the assured (Transit Corporation) are ''taking upon themselves as to said cargo the insurance of said cargo against the perils of the seas and lakes'' and the assurer agreed to indemnify the said assured (Transit Corporation)—''as insurers.'' When the parties to a contract both characterize a liability as that of an insurer and one agrees to indemnify the other against such liability, surely the contract is not wholly ineffective because the liability which the parties have in contemplation and have so characterized in their agreement is technically only ''equivalent to that of an insurer'' and not ''as an insurer.''

In addition the above-quoted clause and the other provisions of the special rider form we also desire to call par- [fol. 368] ticular attention to the fact that in the opening clauses defining the specific nature of the coverage it is stated that it is

''on the Assured's liability to others in respect to cargo of any kind.''

Eliminating the liability features of the policies and considering them merely as insurance upon cargo underwriters cannot recover a moiety of the damage from the Transit Corporation under the doctrine of Wager vs. Providence Insurance Co., 150 U. S. 99, since an underwriter cannot be subrogated as against a named assured.

In the above case Morse & Co. took out an open running policy which provided that underwriters by

> ''This policy of insurance, on account of Morse & Co. *for account of whom it may concern,* do insure the

> several persons whose names are hereafter endorsed hereon as owner * * * or common carrier on goods, wares and merchandise on its own boat or boats belonging to others, etc." (Italics ours.)

Two bills of lading were issued, one by Morse & Co. and another, referred to as a sub-bill, by the master of the "Sydney" which towed and had control of the towing tug. Morse & Co. applied for and received a certificate of insurance from underwriters to the effect that it had insured the cargo in question in the amount of $9875, loss, if any, payable to assured or order upon return of this certificate. The certificate was endorsed in blank and delivered to Armour, Plankinton & Co., Buffalo agent of the cargo owner. Thus an open policy to Morse & Co., a named assured, "for whom it may concern", a certificate evidencing such insurance was issued, and by an endorsement was delivered, held and owned by the cargo owner itself. The cargo was lost and underwriters paid Armour, Plankinton & Co., cargo owners, for the loss. Underwriters then [fol. 369] brought suit against Morse & Co., which had issued the bill of lading whereby it was agreed that cargo was to be delivered in good order at destination, claiming that since the policy read "for whom it may concern," and since the certificate had been issued and endorsed to the owner of the goods, it was the only party insured, and Morse & Co. was liable as carrier. We quote from the opinion of the Supreme Court:

> "Clearly, under this state of facts, H. Morse & Co. were, nominally at least, the parties insured, and came within the terms of the policy, and, upon a loss, were entitled to receive the amount of the policy, and, of course in that event, the insurers could not, after having paid H. Morse & Co. the amount of the loss, *recover it back* from them under the principle of equitable subrogation." (109). (Italics ours.)

The Wager case is an authority to the effect that irrespective of the fact that policies of insurance, payable to a named assured "for whom it may concern", are issued primarily for the benefit of cargo owners (Opinion p. 9), nevertheless underwriters cannot be subrogated to the rights of the cargo owners against the named assured. This decision

has never been overruled or questioned but has been followed many times.

To the same effect as the Wager case are:

> The John Russell, 68 Fed. (2d) 901; Sorenson vs. Boston Inc. Co., 20 Fed. (2d) 640; Gross vs. New York & Texas S. S. Co., 107 Fed. 516; Phoenix Ins. Co. vs. Erie & Western Transp. Co., 117 U. S. 312, at pp. 320-325.

The case at bar is, of course, much stronger in so far as the carrier is concerned, than the Wager case. In the Wager case, after the issuance, endorsement and delivery of the certificate, Morse & Co., in so far as actual reimbursement for cargo damage was concerned, was eliminated from [fol. 370] the transaction entirely. When payment time came underwriters dealt directly with the cargo owner, Armour, Plankinton & Co., and paid the cargo loss to it. In the case at bar, although both Schedule A (Rec. 268) and the first interest (Rec. 275) provided that loss was payable to Great Lakes Transit Corporation or order, the Transit Corporation first paid cargo owners by its own voucher drafts containing receipts running directly to the Transit Corporation (Schedule "E", Rec. 295), and were later reimbursed by underwriters by checks payable to its order individually, not as bailee or trustee for cargo. In this case, had the Transit Corporation issued orders to underwriters to pay cargo owners their loss and expense, under the doctrine of the Wager case underwriters could not have recovered back the amount of such payments. Surely underwriters paying the Transit Company directly for its own account, not as trustee or bailee for cargo, cannot recover back the payments thus made.

Although in our main brief (pp. 66, 67) we discussed the Wager case at length, since it cannot be distinguished from the case at bar, proctors for underwriters do not refer to it or cite it in their brief, and the Court apparently overlooked it.

The ground suggested by Judge West for distinguishing the Wager case (Rec. pp. 318-319) is wholly untenable for the reasons discussed at length on pp. 68-71 of our main brief.

Underwriters have no right to recover back moneys voluntarily paid by them to reimburse the Transit Corporation for its payments to cargo owners.

As we have pointed out above, from 1928 to 1933 inclusive, the Transit Corporation had issued tariffs, pro-
[fol. 371] cured insurance substantially the same as presented to this Court, and during these five years the Atlantic Mutual and other underwriters had reimbursed the Transit Corporation for losses paid by it to cargo owners arising out of perils of the seas, including collision. (Stipulation of Facts, Rec. 276.) After the decision of mutual fault no one imagined that with the policies speaking precisely as to the risk assumed by the underwriters and the history above recited, anyone could contend that the policies, for which the Transit Corporation paid a premium of almost $25,000, were entirely worthless to it and it was wholly uninsured with respect to its liability to cargo. Likewise none of the parties to this litigation imagined that underwriters could recover back a payment voluntarily made to its named assured to reimburse it for payment to cargo owners for the liability the named assured had assumed and for which by payment as well as by policy provisions underwriters conceded they were liable. Although the opinion states that the question presented is

> "whether the cargo insurance was payable to the owners of the Dixon as carrier, or as bailee or trustee of the cargo for the owners." (P. 8.)

this cannot be correct, first, for the reason that it is contrary to the stipulated facts (Rec. 265-266), and, second, that since the Transit Corporation paid cargo owners in full with its own funds for the loss they sustained, long before it was reimbursed by underwriters, at the time of such reimbursement it could not have been acting as bailee or trustee for anyone. It received such reimbursement for its own account. If underwriters were subrogated to the rights of cargo owners as against the Transit Corporation, or considered they had any such right, they would have refused reimbursement to the Transit Corporation. How-
[fol. 372] ever, the stipulated facts are not only that they have reimbursed the Transit Corporation, less the deductible average, for the portion of the cargo loss which it had previously settled with its own moneys, but:

"That when further claims not approved and paid on the date of said adjustment, to wit: January 22, 1934, are received, approved and *paid by the Great Lakes Transit Cor-*

poration, a further statement or statements will be made *and payment will be made in like manner by the underwriters,* and that finally when all data is at hand, a General Average statement will be prepared by said adjusters, and when this statement is approved by underwriters *they will make payment to the Great Lakes Transit Corporation* of cargo's proper proportion of General Average and like expenses *in the same manner as they made payment under the adjustment of January 22, 1934.*" (R. p. 266; italics inserted.)

No mistake of fact or fraud is claimed in pleading, proof or argument to support a recovery back of the moneys previously paid by underwriters to the Transit Corporation. Nevertheless this court has not only decreed such a recovery, but also a recovery of future payments, contrary to the stipulated facts as to the rights of the parties.

It is therefore respectfully submitted that a rehearing should be granted upon the question as to the rights of intervening underwriters.

Respectfully submitted, Brown, Ely & Richards,
Proctors for Great Lakes Transit Corporation.
John B. Richards, David S. Jackson, Of Counsel.

[fol. 373] In United States Circuit Court of Appeals

Order Denying Petition for Rehearing—Filed November 7, 1936

The petition to rehear is denied.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 374] Supreme Court of the United States

Order Allowing Certiorari—Filed March 8, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted, limited to the second question presented by the petition for writ of certiorari.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 375] SUPREME COURT OF THE UNITED STATES

STIPULATION AS TO PRINTING RECORD—Filed March 12, 1937

It is hereby stipulated, by and between the counsel for the respective parties hereto that the printed record herein may consist of the following, references herein being to pages of the printed record as certified to by the Clerk of the United States Circuit Court of Appeals for the Sixth Circuit:

(1) Page 1 of printed record as certified by the Clerk of the Circuit Court of Appeals for the Sixth Circuit.

(2) Libel of Interstate Steamship Company vs. Great Lakes Transit Corporation (pages 2-5).

(3) Answer of Great Lakes Transit Corporation to libel of Interstate Steamship Company (pages 6-10).

(4) Page 15 of printed record as certified by the Clerk of the Circuit Court of Appeals for the Sixth Circuit.

(5) Libel of Great Lakes Transit Corporation vs. Steamer "Willis L. King" and Interstate Steamship Company (pages 16-21).

(6) Claim of respondent and claimant, Interstate Steamship Company (page 22).

(7) Answer to libel filed by Great Lakes Transit Corporation (pages 23-26).

(8) Petition under the 56th Admiralty Rule to bring in Great Lakes Transit Corporation, owner of the Steamer "George D. Dixon", as carrier and/or bailee of cargo, to answer cargo claim (pages 34-38).

(9) Answer of Great Lakes Transit Corporation, as owner of the Steamer "George D. Dixon" and as impleaded respondent, to its libel and complaint as carrier and/or bailee of cargo (pages 39-40).

(10) Answer of Great Lakes Transit Corporation to petition of Interstate Steamship Company under the 56th [fol. 376] Admiralty Rule bringing in Great Lakes Transit Corporation to answer cargo claim (pages 40-44).

(11) Statements on pps. 55 & 56 of printed record as certified by the Clerk of the Circuit Court of Appeals showing consolidation of cases.

(12) Memorandum, opinion and decision of the District Court dated March 28, 1934 (pages 242-251).

(13) Petition of Great Lakes Transit Corporation for reargument (pages 251-252).

(14) Memorandum of Judge West denying petition for reargument (foot of page 252 of printed record).

(15) Order denying petition for reargument (page 253).

(16) Petition of Atlantic Mutual Insurance Company intervening for its interest as insurer and underwriter of the cargo of the Steamer "George D. Dixon" (pages 253-258).

(17) Stipulation with respect to and for the benefit of insurance companies other than Atlantic Mutual Insurance Company that the intervening petition of Atlantic Mutual Insurance Company stand as and for the intervening petition of each of said insurance companies dated May 27, 1934 (pages 258-261).

(18) Stipulation dated June 13, 1934 and Schedules "A" to "F", inclusive, annexed to said stipulation (pages 262-305).

(19) Answer of Great Lakes Transit Corporation to intervening petition of Atlantic Mutual Insurance Company (pages 306-310).

(20) Answer of Interstate Steamship Company to intervening petition of Atlantic Mutual Insurance Company (pages 311-314).

(21) Opinion and decision of the District Court dated July 9, 1934 on settlement of interlocutory decree (pages 315-316).

(22) Letter dated July 10, 1934 from S. H. West, Judge, to Messrs. Stanley & Gidley and Messrs. Brown, Ely & Richards re opinion (pages 316-317.)

(23) Supplemental opinion and decision of District Court dated July 27, 1934 on settlement of interlocutory decree (pages 317-319).

(23) Interlocutory decree (pages 319-324).

(24) Notice of appeal, proof of service and waiver of citation (pages 324-325).

(25) Petition for appeal (page 326).

(26) Assignments of error (pages 328-332).

(27) Order allowing appeal (pages 333-334).
[fol. 377] (28) Proceedings in the United States Circuit Court of Appeals for the Sixth Circuit (pages 347-373).

and that each and every other part of the record as certified by the Clerk of this Circuit Court of Appeals for the Sixth Circuit may be eliminated from the printed record.

Dated: March 9th, 1937.

Rhumes E. Coffey, Brown, Ely & Richards, Counsel for Petitioner. Frederick L. Leckie, Thomas H. Garry, Duncan, Leckie, McCreary, Schlitz & Hinslea, Counsel for Respondent, Interstate Steamship Company. Stanley & Gidley, Counsel for Atlantic Mutual Insurance Company et al.

[fol. 378] [File endorsement omitted.]

Endorsed on cover: File No. 41,256. U. S. Circuit Court of Appeals, Sixth Circuit. Term No. 716. Great Lakes Transit Corporation, Petitioner, vs. Interstate Steamship Company and Atlantic Mutual Insurance Company et al. Petition for a writ of certiorari and exhibit thereto. Filed February 6, 1937. Term No. 716, O. T., 1936.

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